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VOLUME III

CA2 ALZ 1 1969021
Transcript of the Evidence and Proceedings
At a Hearing Before the Commission 3, c.1



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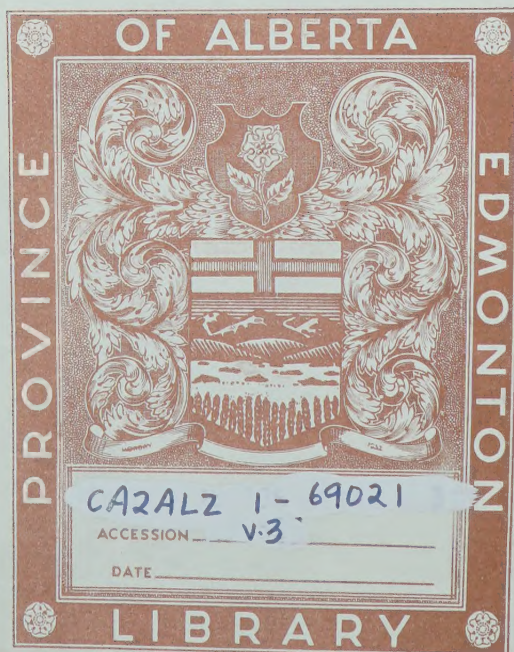
TRANSCRIPT OF THE EVIDENCE AND PROCEEDINGS
AT A HEARING BEFORE THE COMMISSION TO
INQUIRE INTO THE SUBMISSION OF THE OMBUDSMAN
DATED OCTOBER 10, 1969, HELD IN THE JUBILEE
AUDITORIUM, IN THE CITY OF EDMONTON, PROVINCE
OF ALBERTA, ON JUNE 24TH, 1970, TAKEN IN
SHORTHAND BY LOUIS LEE AND BEVERLY K. KELLOUGH,
OFFICIAL COURT REPORTERS.

THE HON. C. C. McLAURIN,.....	COMMISSIONER,
W. A. McGILLIVRAY, Esq., Q.C.,....	Counsel for the Commission,
J. C. CAVANAGH, Esq., Q.C.,.....	Counsel for Mr. R.J. Philipzyk,
D. H. BOWEN, Esq., Q.C.,.....	Counsel for Edmonton Real Estate Board Co-operative Listing Bureau Limited,
A. B. WEIR, Esq.,.....	Counsel for the Ombudsman,
W. ALAN SHORT, Esq.,.....	Secretary.

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ACCESSION

DATE

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Philipzyk,
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Estate Board Co-operative
Listing Bureau Limited,
A. B. WEIR, Esq.,..... Counsel for the Ombudsman,
W. ALAN SHORT, Esq.,..... Secretary.

24TH JUNE, 1970, 10 A.M. HEARING RESUMES.

MR. MCGILLIVARY: I think, sir, we were at the stage when Mr. Kellough was giving evidence and I had just finished asking questions in-chief and my friends were about to cross-examine.

Mr. Bowen is appearing for Mr. Kellough, and I believe he goes first.

HOMER R. KELLOUGH, examined by MR. BOWEN:

Q Mr. Kellough, what offices have you held with the Edmonton Real Estate Co-operative Listing Bureau Limited?

A Director; past president.

Q I take it you were president at that one time, and you are now past president?

A The Ex-president. I chaired most of the committees at different times.

Q Did this cover a number of years, the service that you rendered?

A It would go back to 1945.

Q And you were active up until what year?

A Well, I would like to think I am still active, but I am not holding any office at the present moment.

Q When did you cease holding any office?

A '57 I would say, other than committee office.

Q I would like to direct your attention to the area of June 1965, at which time you wrote your first letter to the Board, the area I am talking about.

A Yes.

Q When you saw Mrs. Hansen and Mr. Olthius in your office regarding this alleged conversation with Mr. Philipzyk, did you make any suggestions to them or how did you approach this matter?

A I had heard originally part of the story from Mr. Larsen. He alerted me as to what was taking place, and I asked Mr. Larsen to arrange with them to come in and see me at the office.

Q So they came?

A They came.

Q All right. Now, we are talking about that time.

A Yes.

Q What happened in fact?

A I asked them to tell me the story, what had happened, and they gave me the story. I felt I had it pretty well pinned down, and it was a story I didn't like. I didn't --

Q All right. Just a moment. Now, this story that they told you on that day, to your memory does it coincide with the letter that they wrote in November?

A I would have to read that letter again, sir.

Q What is your memory on it?

A Well, they were told that I had beat him out of a lot of money; the only way he would ever collect from me would be to sue me. I think he had said that I was not fit to be an agent, and that if they stayed with me they would regret it.

Q Was this story told you by these two people voluntarily?

A Yes.

Q Now, you referred to money owing by you to Mr. Philipzyk. Was this the case?

A This is absolutely absurd.

Q And in effect was it the reverse; did he owe you money?

A At that time roughly \$1,500.

Q Now, his employment with you extended over a period from late 1960 I believe until 1964 in May or June, is this correct?

A I believe so, yes.

Q And during that time was there ever a period within that area in which he did not owe you money?

A Never. He owed me every cheque he ever drew. It was an advance --

Q Just a moment. I take it during this period there was never a moment of time that he did not owe Homer Kellough Realty or Trotter McIntyre money?

A Correct.

Q Coming to the question of the Hearing, the Ethics Hearing in the Real Estate Board offices, you told us yesterday you would consider it a formal meeting, is that right?

A To the best of my knowledge.

Q Was there any untoward conduct by way of shouting and screaming at each other?

A I would not use that term. There was one man who called another a liar, and I think the charge was reversed.

Q What was the general tenor of the meeting, was it a level, decent, well conducted meeting?

A I couldn't criticize it at all. I have sat on many of them.

Q What was the level of your voice when you called Mr. Philipzyk a bastard. Were you shouting?

A I can't remember calling him that, sir --

Q All right.

A -- but I have a recollection the Chairman bringing me to order. I am accepting the fact that I used

A (Cont) the term.

Q Please direct your attention to my question? Were you shouting at Philipzyk?

A Never at any time.

Q Was there anybody shouting at this meeting?

A Shouting as such, no.

Q You have an accountant, Mr. Kellough, who I gather will be the next witness, Miss Kolody?

A Yes.

Q How long has she been with you, sir?

A Sixteen years.

Q Do you value her services?

A Definitely.

Q Have you found her to be a good accountant during that period?

A Excellent.

Q Accurate?

A Definitely, yes.

Q You made mention yesterday, Mr. Kellough, of an insurance policy which you had covering your employees. I gather, sir, this was to cover medical payments and benefits, is this correct?

A It covers everything right down to life insurance.

Q And this was in effect within your firm during the

Q (Cont) time of Mr. Philipzyk's employment?

A Oh yes.

Q And could the benefits that accrue from this policy be obtained by anyone other than your employees?

A Their dependents.

Q What I mean is this: If a man quit or was fired, did those benefits continue?

A I'm not sure of that, sir.

Q Now then, during this time did Mr. Philipzyk obtain benefits under this policy?

A Yes.

Q Was it your understanding then that if he had quit that he would not be able to obtain these benefits?

A I am vague on that point.

I haven't looked it up.

Q In your letter of June 8th you indicated that you kept him on in order that he could obtain the benefits.

A I didn't want to raise a point at that time because I felt this money was vital to him.

Q Why did you keep him on?

A Because of those benefits.

Q For that reason?

A For that reason.

Q Was there any other reason that you kept him on?

A I didn't want to let him go when he was having trouble. He was having a lot of mental anguish at the time.

Q For what reason?

A His wife was very seriously ill.

Q If it had not been for the aspect of the medical benefits and his own personal troubles, would you have fired him?

A I have a manager that would have continued with me.

Q Would you have fired him?

A Yes.

Q You didn't fire him.

A I didn't.

Q Mr. Kellough, when Mr. Philipzyk entered your employment, did he enter into a memorandum of agreement, an employment agreement?

A Yes.

Q I'm showing you a copy of what purports to be an agreement.

A Yes.

Q Is this the agreement that he entered into?

A Yes.

Q And as part of that agreement --

MR. BOWEN: Could we have that entered now?

THE SECRETARY:

Exhibit 27.

AGREEMENT AS DESCRIBED,
MARKED EXHIBIT #27.

MR. BOWEN:

If I may, sir, I would like to read the last paragraph, paragraph 9 on page 2.

"It is mutually agreed that all cases of dispute between the Company and the Employee shall be settled by arbitration, the Company to appoint one member and the employee to appoint one member, a third member to be appointed by these two (in each case from the officers or employees of the Company and not any one outside the Company; the decision of the majority to be final and binding on both parties hereto.)"

Q MR. BOWEN: Mr. Kellough, you are aware of that provision?

A Yes, sir.

Q Are your employees made specifically aware of that provision in their employee contract?

A It is invariably pointed out to them when they

A (Cont) sign the contract.

Q Have other members in your firm taken advantage of this to go to arbitration at times?

A Just once. The employee had left the company.

Q Now, sir, are there statements given to your employees or salesmen each month as to their standing with regard to the amount they earn, etcetera?

A Yes, sir.

Q And in particular were statements given to Mr. Philipzyk during th term of his employment?

A Yes, sir.

Q I am showing you what purports to be copies headed R. J. Philipzyk for certain months. To your knowledge are these the copies of statements given to him?

A Copies of the original.

The original would be on the letterhead statement.

MR. BOWEN: May we have those entered, sir.

They are a group of monthly statements.

THE SECRETARY: Exhibit 28.

GROUP OF MONTHLY STATEMENTS,
AS DESCRIBED, MARKED EXHIBIT #28.

Q MR. BOWEN: These statements are prepared

Q (Cont) by whom in your organization?

A Miss Kolody.

Q That is your accountant?

A Under her supervision.

Q I am showing you Exhibit 16 to this Inquiry, and while it has nothing particularly directly to do with this, is this a copy of the control sheet that is used by your organization?

A Yes, sir.

Q And the purpose of this control sheet is what?

A For a breakdown of commissions.

Q Does it show on that the split up of commission between the selling agent or listing agent, the manager, and the company?

A Yes, sir.

Q And under ordinary circumstances does it get into the hands of the salesman?

A He gets a copy of it.

Q And on it it shows what his commission is?

A Yes, sir.

Q Now, I gather, sir, that Mr. Philipzyk did obtain monies from your company even although he owed your company money?

A Yes, sir.

Q And under what circumstances would this money be advanced to him?

A Out of necessity. He needed it, I gave it to him.

Q Now tell me, is this a practice you make with your salesmen to advance money against future earnings?

A We occasionally do it.

Q And when these monies would be advanced to Mr. Philipzyk, who would authorize the advance of them?

A It would be -- the manager would take it up with myself.

Q And did you at any time deal directly with Mr. Philipzyk in these matters?

A Oh, he has called at the office and had seen me, and I have given him a cheque direct. That has happened.

Q I am showing you a bundle of cheques drawn on the Canadian Bank of Commerce, sir, and they date from January 10 1961 through to May 7 1964. Do you recognize those cheques, Mr. Kellough?

A Yes, sir.

Q And they are what?

A Advances to Mr. Philipzyk.

Q And is each cheque marked as such, as an advance?

A I would think so.

Q Would you examine them, please.

A Just wading through, they all are.

MR. BOWEN: May we have those entered, sir.

MR. MCGILLIVRAY: I just wonder if we should have the record, if I may use the expression, cluttered up by this mass of cheques. I think my friend can establish that the summary of those cheques is all in the exhibits that have been filed in the accounting statements - these are the actual documents. I think my friend, Mr. Cavanagh, on behalf of Mr. Philipzyk, will concede there is no question that the advances, as they are stated in the statements, did occur, and under the circumstances I merely suggest it is perhaps unnecessary to file all the cheques themselves. I am thinking of the transcript or the exhibits - that would be pretty formidable.

MR. CAVANAGH: I have no objection to their not going in, but I would like to see them.

MR. BOWEN: By all means, Mr. Cavanagh.

MR. GILLIVRAY: Certainly, sir, I have no objection to their going in. I am merely making that suggestion. If my understanding is correct, they would appear in the statements.

THE COMMISSIONER: They are not too important.

They are not likely to go to the Supreme Court.

MR. BOWEN: My concern is, Mr. Commissioner, each cheque is marked as an advance. That was the purpose of putting in the whole bundle. If it is conceded --

THE COMMISSIONER: Well, if Mr. Cavanagh will agree, then you can adopt Mr. McGillivray's suggestion.

MR. CAVANAGH: I would have to compare those cheques to the statement to decide whether they are all there.

MR. BOWEN: All right, sir, I would ask that they be put in.

THE COMMISSIONER: Yes.

THE SECRETARY: Exhibit 29.

BUNDLE OF CHEQUES AS DESCRIBED,
MARKED EXHIBIT #29.

MR. BOWEN: Those are all the questions I have, sir.

MR. REDMOND EXAMINES THE WITNESS:

Q Mr. Kellough, I just have one thing to ask you about and that is this: Were you ever contacted

Q (Cont) by or did you ever speak or write to the ombudsman or anyone in his office to tell the facts that you know about this case?

A No, sir.

Q You were not asked to give a statement or file an affidavit by the ombudsman or anyone in his office?

A To clear that point, just shortly before this came up, I received a letter from the ombudsman, a year and a half I believe after his report had been filed, asking me if I want to make any contribution to it.

Q This, you understood, was after the report was filed?

A Oh yes.

Q And until that time you had heard nothing from him?

A Nothing.

MR. REDMOND: Thank you.

MR. CAVANAGH EXAMINES THE WITNESS:

Q Mr. Kellough, Mr. Philipzyk worked for you for a number of years?

A Yes, sir.

Q And you put in a while ago an employment agreement as Exhibit 27, which I believe is dated in 1961?

A Yes, sir.

Q And you told us that was about the time his wife was ill; if it were not for that you would have let him go then, is that right?

A His wife was not ill at that time.

Q No, no, I'm sorry. I am mixing you up perhaps. The agreement was in 1961?

A Yes, sir.

Q I just want to establish that fact.

A Yes.

Q Then I think you told Mr. Bowen when he was having personal difficulties, his wife was ill and so on, at that time you were very dissatisfied with him, you would have let him go except for his personal difficulties?

A That's correct.

Q That must have been in 1963?

A I could answer that better, sir, by saying that the managers were very dissatisfied with Mr. Philipzyk, and I insisted that he be kept on because of his personal problems.

Q I see. Well, what I am trying to do is establish time, and this was in 1963 that he was having these personal problems, is that right?

A I would have to go back and refresh myself on these times

Q I am advised that his wife died in August 1963.
So it would be about that time?

A It would be about that time.

Q All right. Then you sent him a copy of the contract
in February 1964, did you?

A Copy of what contract?

Q The employment contract.

A In 1964?

Q Yes. I show you a letter dated February 14th 1964
purported to be signed by you. Is that your
signature?

A Yes, that's my signature.

Q And it purports to say that it encloses the contract?

A That's correct.

Q And it draws attention to this clause 9 of which
you are so proud?

A Yes. But there is a very simple explanation for
this. Due to a change in stenographers some of these
files, the contracts, had not got out. Now, it's
just coincidental that -- I think you will find
that a lot of them went out just about this time --
the girl going back to the old files and finding
these contracts still in the files.

Q This paragraph was put in at your dictation, was it:

Q (Cont) "It is our sincere wish that our association will be a long and pleasant one and that the real estate profession will provide the success that you as an individual desire."

A That's a form letter.

Q That's a form letter, is it?

A Yes.

Q And you sent this out although you say that some months before you felt he should be fired?

A That letter should have gone out months before - years, I guess.

THE SECRETARY: Exhibit 30.

Q MR. CAVANAGH: Then in May, as I understand your evidence, he terminated his employment with you?

A Yes.

Q How did he do that?

A By conversation with Mr. Larsen.

Q I think you told my friend, Mr. McGillivray, that he gave a verbal resignation to Mr. Larsen?

A I believe that's correct, sir.

Q That's on the 7th of May 1964?

A Yes, sir.

Q As the president of the company did you find out what that was all about?

A I knew what it was all about.

Q He wanted an additional advance and you wouldn't give it to him?

A I just can't remember in that detail. I know things were coming to an end and that he would not be there much longer. I believe there was -- I can't tell you whether there was a question of advance on the date he left or not. He did not officially leave as such; he did not give us -- under his contract we are supposed to get a letter in writing, notice in writing, twenty-four hours. We never received one from Bob, and we just assumed that he was gone because there had been words between him and Mr. Larsen.

Q Then you're going entirely on what Mr. Larsen told you?

A Well, he didn't come back again.
This was the last we saw of him.

Q Then you had nothing to do with him until fourteen months later or so?

A I had nothing to do with him until I got this letter, and then I contacted his lawyers.

Q In December of 1964?

A Yes.

Q Well, you had nothing to do with him or about him except for that until the spring of 1965?

A Not that I can remember now, sir.

Q At that time, Mr. Kellough, were you a director of this organization, the Edmonton Real Estate Board Co-operative Listing Bureau?

A No, sir.

Q Were you on committees?

A At that time, no. Oh now, I might have been named on a committee but I was not acting on the committee. I should explain that: There may be ten or twelve men acting on an arbitration committee and I might be asked to serve in that committee but never be called. At that time they were using me very, very little, if any at all.

Q Well then, you had nothing to do with any deliberations of the Board concerning Philipzyk in 1964?

A No, I couldn't possibly have, I don't think. When he would leave, I would have to advise the Board he was gone and advise the superintendent of insurance.

Q Did you advise Mr. Charter of Canadian Surety Company?

A I don't think so.

Q You were the selling agent who sold the bond that he had filed with the real estate authorities, were you?

A I sold the bond? I don't follow you.

Q When he was employed he had to post a bond with the real estate branch, with the government.

A Yes.

Q And he had to purchase this fidelity bond sometimes, and he purchased it from you, didn't he?

A I took his application and applied for his bond and secured it and paid for it.

Q All right. Then that bond was terminated, was it; do you know?

A No, I had nothing to do with the termination of his bond.

Q Do you know if it was terminated in 1964?

A I don't know. No, I don't know.

Q You had no conversation with anybody concerning the termination of that bond?

A Not that I can remember at all.

Q Do you remember a John McIntyre?

A Yes, I remember John McIntyre.

Q You had no conversation with him concerning the termination of Philipzyk's bond in 1964?

A I don't know why I would be discussing that with John McIntyre.

Q All right. Now at the Hearing in 1965, in December 1965, was the issue whether Mr. Philipzyk owed you money or --

A No, there was no issue there at all.
I made it very, very clear to the Board that I wasn't interested in this money that he owed me.
I felt he had no way of paying me and we were writing it off.

Q Now, was there an appeal?

A From that decision?

Q Yes.

A There was an appeal to the directors.

Q Yes?

A And then there was an appeal to a general meeting.

Q When was the meeting of the directors held?

A I couldn't tell you, sir.

Q Were you there?

A I can't tell you. I don't believe I was.

Q It was adjourned two or three times because of your illness?

A That's quite possible.

Q And when you recovered did you go and give evidence

Q (Cont) at that appeal?

A No, sir.

MR. MCGILLIVRAY: You are talking about two appeals.

MR. CAVANAGH: I am talking first about the directors' appeal.

MR. MCGILLIVRAY: That wasn't adjourned.

MR. CAVANAGH: That wasn't adjourned; it was the general meeting. I see.

Q MR. CAVANAGH: Now, you were not at the appeal before the directors?

A No, sir.

Q Were you at the appeal before the general meeting?

A No, sir.

Q So you have no idea what procedure was employed there?

A No, I have none.

Q Nor who sat on the appeal?

A The general membership sat on that appeal.

Q But on the first one before the directors?

A It would be the directors.

Q The full board?

A Oh yes.

MR. CAVANAGH: That is all I have. Thank you.

(WITNESS RETIRES)

THE COMMISSIONER: Are you going to call Mr. Larsen?

MR. BOWEN: Mr. Larsen is at the end, sir.

He is not on the list as such, but he is a potential witness. He is available.

THE COMMISSIONER: Are you calling him?

MR. BOWEN: It is Mr. McGillivray's decision.

MR. MCGILLIVRAY: Certainly, sir.

I will call anybody that anybody feels that it is desirable --

THE COMMISSIONER: I had better in effect play the cards face up. There is something vital about when the complaint came in the years with Mr. Kellough, and Mr. Larsen apparently had conversation with the two witnesses who reported the slander.

That is all. Thank you, Mr.

Kellough.

MR. MCGILLIVRAY: It might perhaps be convenient at this stage to call Mr. Walker of the superintendent of the insurance office. You will recall that Mr. Cavanagh was speaking to Mr. MacPhee about Mr. Philipzyk's application and it was felt Mr. Walker was the best to give that information.

MR. BOWEN: I wonder, sir, I'm not really objecting, but we have got some continuity going

MR. BOWEN: (Cont) amongst what I call the Kellough witnesses. I think it would be desirable to continue that to a finality before we go back and forth.

THE COMMISSIONER: Oh, this is like getting rid of physicians so that they can go back and look after sick people.

MR. BOWEN: All right.

MR. MCGILLIVRAY: My only thought, sir, was that Mr. Kellough has given evidence that he had no recollection of having anything to do --

THE COMMISSIONER: Well, this may be a little out of order, but --

MR. MCGILLIVRAY: I felt if we could deal with that aspect of Mr. Kellough's evidence following that of Mr. MacPhee's, for that reason it is an appropriate spot.

KENNETH J. WALKER, sworn, examined by Mr. MCGILLIVRAY:

Q Mr. Walker, what is your occupation, sir?

A I am the Provincial Claims Officer, Department of Provincial Secretary.

Q Do you have anything to do with the administration of the Real Estate Agents Licensing Act under Mr. MacPhee,

Q (Cont) the Superintendent?

A I do, sir.

Q Did you become aware in 1964 that on leaving Kellough's Mr. Philipzyk's license became cancelled?

A Yes, sir.

Q That, as I understand it, is automatic on any salesmen leaving the employment of any particular agent?

A Yes, sir.

Q Whether they are members of the Edmonton Real Estate Board Co-operative Listing Bureau Limited or not?

A It does not matter.

Q Now, can you tell the Commissioner whether there was any communication from Mr. Kellough or anybody on his behalf relative to Mr. Philipzyk at that time?

A Yes, sir. On June 9 1964 we received a letter from H. R. Kellough Realty Ltd., a very short letter, which says:

"As Mr. Robert J. Philipsyk is no longer with our organization, we are returning his license number 6377."

And this had the effect of terminating the license of Mr. Philipsyk.

Q This is the sort of letter you get from any agent when the salesman is either fired or leaves?

A Yes, sir.

Q Does your file disclose whether there was any further communication with Mr. Kellough about Mr. Philipzyk?

A No, sir. Certainly not at that time, and I don't think subsequently either. If you want to go through the sequence --

Q Would you tell the Commissioner what occurred as far as Mr. Philipzyk is concerned?

A As a result of the letter from Mr. Kellough's office on June 9, we followed our general practice and wrote to Mr. Philipzyk on June 12th advising him there was that notice and the fact that his license was terminated. On June 18th Mr. Philipzyk submitted an application for a real estate agent's license.

Q On June 18th?

A Yes, of 1964.

Q And he wished to operate under the name of an agency of his own?

A He was going to call himself Comfort Real Estate.

Q Yes?

A He had to qualify by examination.

We communicated with him the same date as we received

A (Cont) the application, June 18 1964, setting up a time for examination and also advising him that we require a five thousand surety bond. His previous bond filed was a one thousand dollar bond, which was still in effect at that time.

Q A one thousand dollar bond is what is required for a salesman?

A Yes, sir.

Q A five thousand dollar bond is what is required for an agent?

A Correct, sir.

Q So you told him that he would have to pass the exam and get a five thousand dollar agent's bond?

A These were the only two requirements remaining for Mr. Philipzyk to complete.

Q Yes?

A On the 25th of June 1964 Mr. Philipzyk failed to pass the exam.

Q He took the exam?

A Yes.

Q And failed to pass?

A That's right, sir.

On that same date a letter was sent to Mr. Philipzyk advising him of his failure and telling him under

A (Cont) the statute he could re-write the exam, and we gave him a further date and time on which he should come to re-write.

Q You gave him a specific date and time, did you?

A Yes, and also reminded him of the supplying of the five thousand dollar bond.

The next item in sequence is on July 6 1964. We received an application from Mr. Philipzyk for a real estate salesman's license to represent Burton Real Estate.

Q He apparently had given up the idea of being an agent?

A Yes. In the letter he told us to refund his fee and cancel his agent's application.

Q Shortly after he got your letter telling him he did not pass his examination but he could try it again?

A That's right, sir.

Q He then wrote you?

A Yes. "I am going to apply for a salesman's license."

Q Which he did?

A Which he did.

Now, having previously been a salesman his bond was still in effect, so all we had to do on receipt of his application and fee was to

A (Cont) issue a license, which we did.

He was issued a real estate salesman's license to represent Burton Real Estate on the 7th of July 1964.

The next item is just a refund of the \$10 fee which he has given to us.

Q That's the entire file until he came to leave Burton Real Estate?

A Yes, he was still at Burton Real Estate.

The next issue is when he came to leave Burton Real Estate.

MR. MCGILLIVRAY: I wonder if you would answer my learned friends.

MR. REDMOND EXAMINES THE WITNESS:

Q Mr. Walker, I notice that from the dates you have given us, the sequence of letters, your department dealt with these various letters and applications from Mr. Philipzyk and his employer with considerable dispatch. In fact a number of letters went out the same day that you received the communication. Now, the reason I mention that is this: I take it it is your department's practice to deal quite quickly with these applications?

A Yes, sir.

Q And I wonder, sir, in a situation where, for example, I was working as a salesman for Mr. McGillivray, who's a licensed agent, and I found that Mr. Cavanagh, who is a licensed agent --

THE COMMISSIONER: You mean you've got too many advances?

Q MR. REDMOND: I found it would be to my advantage to work for Mr. Cavanagh, who's also a licensed agent, if I submitted my resignation to Mr. McGillivray and he sent the license in to you, you were then notified that I was going to work for Mr. Cavanagh, and I gave you my application for a license, would that normally be a pretty routine sort of matter, and would the license come out pretty quickly?

A Yes, sir.

Q I take it then, sir, you would have no occasion in most instances to talk at all to the Edmonton Real Estate Board Co-operative Listing Bureau Limited about whether you should give some salesmen some license?

A Certainly not, sir; no.

Q You would not consult them?

A Not under normal circumstances.

Q If you had some reason to suspect bad character or

Q (Cont) something of that sort, you might make inquiries?

A We would have to have something fairly substantial on renewal. We would have to have in fact a complaint.

Q Except from a complaint from someone to your department, the renewal would be quite routine?

A Quite automatic, yes, sir.

Q Just one more thing, Mr. Walker. Do I take it that both yourself and Mr. MacPhee have duties, apart from real estate, to deal with, that is you are in a branch that also deals with other matters than just the licensing of real estate agents?

A Oh yes, sir.

Q Is your department, insofar as it deals with real estate, set up on the basis that you would have the facility or the staff to go into the matter of policing the ethics of the real estate business in any great volume?

A We always consider we do not have enough staff, but we felt that a matter of ethics is a matter that the businessmen themselves should deal with. We do deal with them when they get to such an extent as to have the agent or salesman not acting

A (Cont) in the public good; but the normal complaint of ethics, we felt, is properly handled by the real estate association to which these people belong.

MR. REDMOND: Thank you, Mr. Walker.

MR. BOWEN: No questions, sir.

MR. CAVANAGH EXAMINES THE WITNESS:

Q Mr. Walker, my friend only brought you down to July of 1964 with regard to Mr. Philipzyk.

A Yes, sir.

Q Was his license not cancelled again in 1964?

A Yes, sir.

Q How did that come about?

A The last thing I gave to Mr. McGillivray was the fact that he was licensed for Burton Real Estate on the 7th of July 1964. By a letter of September 15, 1964 we received from the Canadian Surety Company what is two months calendar notice for the cancellation of the bond which supported Mr. Philipzyk's license.

Q Yes?

A Following again the usual procedure, on the day after receipt of this letter, September 17th, we wrote to Mr. Philipzyk - it's a form letter - just saying that his bond had been cancelled under 60 days notice and that he must furnish us with a

A (Cont) further bond or a reinstated bond within two months hence, that is September 16th 1964, and telling him unless he did his license would be terminated.

Q And then after the 17th of September did he supply a further bond or was his license cancelled?

A On November 17th his license was terminated - it was effective until the 16th November - for the reason given that there had been no replacement of bond. However, on November 20th Burton Real Estate, his employers - they must have delivered this by hand - on the 20th November furnished us with a bond and an application to reinstate Mr. Philipzyk's license, and this was done again immediately on that date, 20th November 1964 - his license was reinstated.

Q So for some reason Canadian Surety in September 1964 notified you they were terminating the bond?

A Yes, sir. If I might say something here. Whether it is a good thing or not I don't know. We get literally hundreds of cancellations of bonds, and I would say probably 90 per cent cancellations are caused by non-payment of premium. The date September 15th is very close to the anniversary date

A (Cont) of Mr. Philipzyk's bond.

Now, Mr. Philipzyk could probably speak to whether or not he paid the premium, but you see the anniversary date is the 28th of October, that is his annual premium date. The notice was received in September. No reason is given for the cancellation, just the cancellation.

Q This was a different bond?

A Yes.

Q It was not with the Canadian Surety?

A It was with the Royal Exchange.

Q Who was the agent, the selling agent, or does your file show, of the bond?

A No, it does not, sir, although I have a note here, some reference from a Knox Robertson. Now, he could have been the agent.

Q All right. After that then, his salesman's license continued in force?

A Yes, sir.

Q For how long?

A Until the 7th of June 1966.

Q At which time?

A It was terminated.

Q By surrender from Burton, was it?

A Yes, Burton Real Estate wrote to us on June 6th 1966 - a very short letter.

"I enclose herewith a copy received this morning from the Edmonton Real Estate Board Co-operative Listing Bureau Limited ordering me to terminate the employment of the above named Robert J. Philipzyk and return his license to your office for cancellation.

In accordance with the above mentioned order I return herewith license number so and so, dated November 20th 1964 for cancellation. We acknowledge that Mr. Walsh of Burton Real Estate enclosed with his letter a copy of a letter from the Real Estate Board addressed to him dated June 3rd 1966."

MR. CAVANAGH: All right. I think that's all the questions I have.

MR. REDMOND EXAMINES THE WITNESS:

Q Just one thing: Does your file indicate after June 7 1966 that Mr. Philipzyk made any further application to you for a salesman's or agent's license?

A No, sir, no further application.

Q And is there anything on your file that would indicate that had Mr. Philipzyk gone to work for another licensed agent that his application to be a salesman with that agent would have been dealt with in any different way than the previous application to work for Burton?

A No different way, sir.

THE COMMISSIONER: Thank you, Mr. Walker.

(WITNESS RETIRES)

MR. MCGILLIVRAY: Miss Kolody.

BERNICE KOLODY, sworn, examined by MR. MCGILLIVRAY:

Q What is your occupation, Miss Kolody?

A Office manager at Kellough Real Estate.

Q You have been with Mr. Kellough for how long?

A I have been working for him since 1955.

Q Now, as an office manager do you have any responsibility with regard to keeping the books?

A Yes, I do.

Q Do you keep them?

A Yes.

Q And I am showing you what is Exhibit 17 in these proceedings which is what purports to be an extract from the ledger sheets of the company's accounts with

Q (Cont) Mr. R. J. Phillips.

A Yes.

Q Is that the same person as Mr. Philipzyk?

A Yes, he used both names.

Q Now, did you prepare this?

A I prepared the original ledger sheet, the secretary probably typed this out. It is a copy.

Q This is a copy of the ledger sheets?

A Right.

Q For instance, I see the opening item January 10 1961
"To advance \$200," and then the next item January 26
"To advance \$100," and then "To EREB lunch \$1,"
"To Group Insurance \$8.50," "To advance \$200,"
"To Advance \$100," and so on. Now, the left-hand
column, as I understand it, constitutes advances
made to Mr. Philipzyk.

A Right.

Q And the right-hand column represents credits to
him for commissions that he has earned, is that
correct?

A Right.

Q Now, with regard to the advances that appear on
Exhibit 17, do I understand that each one of those
is supported by the bundle of cheques which has been

Q (Cont) filed as Exhibit 23?

A All except the last one.

Q All of them except the last one?

A The bundle of cheques, the last one. The bundle of cheques that you have there, the last one is not entered.

Q There is an additional cheque --

A There is a cancelled cheque in that bundle that does not appear on there.

Q Have you compared those cheques with this document personally?

A Yes.

Q And each one of these advances, where it says "Advance", is supported by one of those cheques?

A It should be.

Q There is no doubt about that. The question is is it?

A I would say it is.

Q Well, can you just take one at random. Can you just produce the cheque. Perhaps my friend Mr. Cavanagh would pick one at random.

Let's take September 8 1961. It says "Advance of \$150." Would you produce that cheque?

MR. MCGILLIVRAY:

The witness, sir, produced a cheque

MR. MCGILLIVRAY: (Cont) from Kellough Realty Limited, cheque number 892, dated September 8 1961, "Pay to the order of R. J. Philipzyk \$150." It has typed on it "Advance" and it is signed by Mr. Kellough.

Q MR. MCGILLIVRAY: And I take it this is your signature, Miss Kolody?

A Yes.

Q What is the document that is with it?

A That's for bookkeeping purposes.

Q What is it?

A It is a cheque stub and that is for bookkeeping.

Q It is a copy of the cheque, is that it?

A Right.

Q Now, Miss Kolody, my friend Mr. Bowen put in evidence as Exhibit 28 what is said to be monthly statements. Again, are you familiar with this?

A Yes.

Q What are those exactly?

A They are statements of the salesmen's accounts for one month.

Q What is the purpose of those statements?

A To show the salesmen exactly what they have coming or what is their standing with the company.

Q That is to show the salesman each month their standing with the company is?

A Right.

Q What they have coming?

A What they have coming.

Q What they may owe the company because of advances made to them?

A Yes.

Q These particular statements are headed R. J. Phillips - at least the top one is - care of north east; what does that mean?

A He was at the northeast branch.

Q And this, the top one here, is May 1964 and the first item is "Balance forward \$1,536.76 debit." And then on May 29th --

A He got a small commission.

Q He got a small commission of \$32.07, and that left him, according to this statement, owing \$1,504.69.

A Right.

Q And then on this further item "PENDINGs," there are some other things shown as pending. Now, would Mr. Philipzyk receive this at the end of May 1964?

A No, because by the time it takes to type them up, we usually get them out sometimes by the 15th of the

A (Cont) following month.

Q Usually about the 15th of the following month?

A The following month.

Q Now, Philipzyk apparently left the company in May. Do you know if the last statement would have got to him in June? Do you have any personal knowledge of that?

A Well, I wouldn't. The statement are sent out to the branch.

Q There is a further statement for April 1964, and again that shows at that time -- well, at the end of March, according to the statement, he was owing \$1,650 odd, there was a further advance for Group Insurance of \$12.50, and then he earned a commission of \$125 odd, and that left him at the end of April owing \$1,536.76.

A Right.

Q And do these statements continue monthly from -- the earliest that I see here is September '63 - October '63, November '63, December '63, December and January '64, February '64, March '64, April and May. Were there earlier statements, do you know?

A Yes.

MR. BOWEN:

I see I have omitted to enter four statements here for the year of 1963. That's all we have.

MR. MCGILLIVRAY:

I am not concerned --

THE COMMISSIONER:

I am alert to this.

Q

MR. MCGILLIVRAY:

Now, as I understand the practice, this is not just Mr. Philipzyk's case. These statements are given monthly to each salesman.

A

Every salesman receives the same statement.

MR. MCGILLIVRAY:

Now, Mr. Commissioner, I should say this: I am informed by my friend that there is no quarrel with the statement as such but the question arises as to whether there are some commissions due to Mr. Philipzyk which do not show as credits.

THE COMMISSIONER:

They materialized after severing his connection with the company?

MR. MCGILLIVRAY:

Or that occurred while he was there but --

THE COMMISSIONER:

Not finally processed.

MR. MCGILLIVRAY:

Or he says he should have the commission but they didn't show it as such. And I'm instructed that there are four instances

MR. MCGILLIVRAY: (Cont) that Mr. Philipzyk instructs me about where he raises this question, and accordingly I asked my friend Mr. Bowen to produce the files. The files are here, and I propose to ask Miss Kolody specifically about them, whether commissions were due, whether they were paid, just what the situation was. I'm sure my friend Mr. Cavanagh will supplement anything that I overlooked.

THE COMMISSIONER: I think, perhaps, if we are going to have a break, we might have it now.

HEARING IS ADJOURNED.

HEARING IS RESUMED.

BERNICE KOLODY, on former oath, examined by MR. MCGILLIVRAY:

Q Now, Miss Kolody, the question arises as to whether Mr. Philipzyk should not have a commission due him in respect to two transactions, the sale of the McCracken home and the sale of the Koopman home. Now, I wonder if you would first tell me whether these are the files that relate to the transactions.

A Yes, they are.

Q Now, I start out this way: I enter a file involving a sale by one Bleich to Mr. and Mrs. McCracken

Q (Cont) and the sale price is \$14,800, is that correct?

A Right.

Q And the salesman is Mr. Phillips?

A Right.

Q The commission payable after deducting something for advertising that the company paid is \$703?

A Right.

Q And Mr. Phillips or Philipzyk's share is 45 per cent, is that correct?

A Right.

Q On this figure?

A Yes.

Q Representing a sale from Bleich to McCracken?

A Yes.

Q Now, was Mr. Philipzyk ever paid that money or credited?

A No, he was not.

Q Why is that?

A Well, in order that M . McCracken get into the Bleich house, Columbia Mortgage, which is a sister company of Kellough Realty, have to buy McCracken's house.

Q What you are saying is that in order for the McCrackens to buy from Bleich the house that they

Q (Cont) bought, they had to sell their own house?

A Right.

Q And to sell their own house the real estate company, through its vehicle if you like, Columbia Mortgage, bought the house?

A Right.

Q Then what happened?

Now, this is something that is what? The salesman that lands up this deal recommends it to the company? How does it work?

A Sometimes they recommend it to the company; sometimes they get into a buying term. We have to buy the house.

Q I see.

A But I don't know what happened in this case, but Columbia Mortgage did buy the McCracken house; therefore, the company owned the house and we had to sell it, so we sold it to a Mr. McCracken.

Q Yes?

A Mr. Koopman, pardon me.

Q Now, Koopman is the second transaction.

THE COMMISSIONER: Have you finished the first one?

MR. MCGILLIVRAY: No, sir. On the list of files that my friend and his client have given to me as

MR. MCGILLIVRAY: (Cont) being places where they think a commission might be payable to Mr. Philipzyk, there were McCracken and Koopman given to me. I think you will find the McCracken and the Koopman transactions relate to the same transaction.

Q MR. MCGILLIVRAY: So anyway we've got the McCrackens who buy a house from Bleich, and the commission is payable, but for them to buy the house they have to sell their house to a real estate company which in effect buys it?

A Yes.

Q So it has not got a house?

A That's right.

Q And it then sells to Koopman?

A Yes, but when the company buys a house, all commissions are frozen. There is no distribution until the transactions are completed. In other words, the commission on that first deal is frozen.

Q That is the commission isn't earned until the house the company has to take in to make the deal is subsequently disposed of?

A Right.

Q And depending on what happens, does the commission vary? If the company finds it has got a white

Q (Cont) elephant and can't get rid of the house except with a loss, how would that affect the commission?

A There are not any commissions then.

Q Pardon?

A There are not any commissions.

Q There are not any commissions?

A There are not any commissions then payable to the salesman.

Q You say there are not any commissions. Is this some sort of a rule or arrangement that is made?

A That is the company's policy.

Q Does the salesman know about this?

A Yes, they are all aware of this.

Q And this is what is done in every case?

A Yes.

Q If you take property in, then commissions are frozen until you see what happens to the property you have taken in?

A Right.

Q Go ahead and just tell the Commissioner what happened here. The company has now got the McCracken property.

A Right, and it was sold to a Mr. Koopman.

Now, on the transaction with Mr. Koopman, the company

A (Cont) took a second mortgage - \$2,900.

Q It sells to Mr. Koopman but takes a second mortgage for \$2,900?

A Right.

Q Now, is there a first mortgage against the property?

A Yes.

Q Does the second mortgage represent the company's entire interest?

A Yes, and commissions.

That is the entire interest, including commissions, all tied up in that second mortgage.

Q Yes?

A Now, on the second mortgage payable at \$30 a month payable by Mr. Koopman, he never made any payments to us even after several statements.

Q He never made any payments?

A No, he never made any payments.

Q He was supposed to pay \$30 a month?

A Right. He did not make any payments on that, and then we were advised that the first mortgage people were foreclosing.

Q The first mortgage people were foreclosing?

A That's correct. So therefore we lost out on the second mortgage.

Q Anyway the property was foreclosed by the first --
A Mortgage holder.

Q And your second mortgage became valueless?

A Right.

Q And as a result you say the internal arrangement
 in the company under those circumstances is there
 is no commission payable?

A In fact in this transaction the company lost about
 \$900.

Q Now, this isn't charged to the salesman or anything
 like that?

A No, unfortunately. If there is a loss, the company
 stands the loss. If there's a surplus, the salesmen
 all take part in the surplus.

Q Well, you say unfortunately, but then it depends on
 whether you are the salesman or the company.

A I represent the company.

Q That's the McCracken and Koopman transaction?

A Right.

MR. MCGILLIVRAY: Now, perhaps these files should be
 marked, sir. The first is the Bleich to McCracken
 sale, which is dependent upon the McCracken/Columbia
 Mortgage sale; and then the third file is the
 Columbia Mortgage to Koopman sale. The files are

MR. MCGILLIVRAY: (Cont) here, and the last letter is from solicitors relating to the foreclosure action.

My friend has looked at them. Perhaps they might all be marked now as one exhibit.

THE COMMISSIONER: Yes.

THE SECRETARY: Exhibit 30.

FILES AS DESCRIBED,
MARKED EXHIBIT #30.

Q MR. MCGILLIVRAY: Now, another transaction that has been raised, which might be the subject of a commission, is what I am instructed the Dick transaction. Now, what happened there?

A It's a similar case.

Q Can you just tell the Commissioner from the files what occurred?

A The people by the name of Dick bought the Wapiti house. In order to buy their house they had to sell theirs. Columbia Mortgage bought the Dick house and subsequently sold it to the people called Bodis. Now, in that case we held a large second mortgage. This is still -- it's in the lawyers' hands right now. It is being foreclosed.

Q The second or the first mortgage?

A That's right, the second mortgage.

Q That is you are seeking to foreclose?

A Yes, we are seeking to foreclose on this one because there is a small second mortgage and we paid that off and own the house, and foreclose. Now, this is in the solicitors' hands.

Q This is not finalized, you don't know whether you might make out all right on that or whether you won't, is that the situation?

A Well, I am hoping to get my money back, that is all, because I have been keeping up the payments on the first mortgage.

Q You say you are hoping to get your actual out of pocket back?

A Right. If there is any surplus, then the salesmen involved will get their portion of it.

Q If you actually get your out of pocket back, then it would mean there would be no loss to you on the acquisition of this house that had to be acquired from Dick to make the sale. Under those circumstances wouldn't the salesman then be entitled to his commission?

A After this wound up, if there is any surplus, yes,

A (Cont) they would be entitled to a commission.
It was noted on Mr. Philipzyk's statement, but last fall I had reversed it.

Q You say this was something noted on his statement as being something pending depending on what happened?

A Right.

Q Now, if a commission does turn out to be payable to Mr. Philipzyk, how much would it be?

A I couldn't really tell you because I don't know what the surplus is going to be. If I had \$500 surplus --

Q What is the maximum Mr. Philipzyk could receive?
Assuming you got a surplus, what would be his full commission?

A I couldn't say.

Q But on the sale of the Dick house, it got sold for something and Mr. Philipzyk --

A He may even get more than what is on here if there is a large surplus.

Q Does he participate in part of the profit if they take in a house?

A If there is a surplus, he gets a portion of the surplus.

Q And they also get their commission for having made the sale to the gentleman whose house they buy, is that right?

A Right. Well, it is included in the surplus, that commission is included in there.

Q The total commission here, as I read it, the total commission on sale is \$200, and Mr. Philipzyk's share in this instance is 50 per cent?

A It would be \$95.

Q There is a five per cent charge, what is that for - advertising?

A Right.

Q That was \$10, so there was a net commission to be distributed of \$190, and Mr. Philipzyk would be entitled to fifty per cent of that under this situation?

THE COMMISSIONER: If everything works out eventually.

MR. MCGILLIVRAY: If everything worked out.

A That's right, but this goes back to 1963.

THE COMMISSIONER: For our practical purposes - after all we are not keeping books - it just means that it is problematical but there might be \$95 for Philipzyk for sometime in the future.

MR. MCGILLIVRAY: Now, another transaction is Pullishy, but my friend advises that he is satisfied that proper accounting is made under transaction. There was one other but that appeared on the statement

MR. MCGILLIVRAY: (Cont) itself.

I think you are satisfied about that,
a very large item on the statement?

MR. CAVANAGH: It's in the supplementary statement.

MR. MCGILLIVRAY: You are satisfied about that?

MR. CAVANAGH: Yes.

MR. MCGILLIVRAY: That's everything.

THE COMMISSIONER: On the basis of the evidence that

I have heard today, give or take \$100 or so, Mr.

Philipzyk still owes Kellough \$1,500.

MR. MCGILLIVRAY: Well, subject to my friend's cross-
examination, I suppose.

THE COMMISSIONER: As I say, on the evidence that I
have heard today, that's the story.

Any cross-examination?

MR. BOWEN CROSS-EXAMINES THE WITNESS:

Q Miss Kolody, who authorizes, that is who says to
you as the bookkeeper of the books what commission
shall be payable to which salesman?

A I receive control sheets from the branch manager.

Q Control sheets?

A On the sale.

Q And by that you are referring to Exhibit 16, the
control sheets? This is what you are referring to, is it?

A That's right.

Q And that is set up on the basis of percentages to each salesmen, manager, and the company?

A Right.

Q If there is a dispute on these percentages, does this come to you?

A No, it doesn't.

Q Whom does it go to?

A To the branch manager.

Q So that I take it the general routine is the branch manager sends you a control sheet on a deal. When you finally get the commissions in, then you pay out cheques or credit --

A Accordingly.

Q -- the salesmen who are indebted to the company with the percentage shown on that control sheet, is that right?

A Right.

Q Is it routine on trade-ins, if I understand you correctly you say until all of the transaction is completed, including the sale of the trade-in house, no commissions are payable?

A No, sir.

Q If there is a surplus, then the salesman in the various

Q (Cont) sales leading up to that participate on a pro rata basis, is this right?

A Right.

Q And that pro rata basis is on the value of the house sold?

A Right.

Q And it could occur that the service is less than the commission shown?

A Yes.

Q So that they get less than the stipulated commission on the control sheet?

A Yes.

Q Or it could occur that the surplus is a great deal more than the total of the commission and they would participate in this fully pro rata?

A Right.

MR. BOWEN: Thank you.

MR. REDMOND EXAMINES THE WITNESS:

Q Just one thing, Miss Kolody. Did you ever have any communication from the ombudsman or his office in which you were asked to give to the ombudsman any of the information that you have given this tribunal this morning?

A No.

MR. REDMOND:

Thank you.

MR. CAVANAGH EXAMINES THE WITNESS:

Q Miss Kolody, I believe there is a mistake in the Commissioner's mind about the amount owing. After you credit the Van Gunset thing, isn't the amount, according to your statement, \$1,368?

A I'll have to see the statement.

Q The exhibit shows that the balance is \$1,368.97.

MR. MCGILLIVRAY: Exhibit 17, sir.

A Yes, that's right.

Q MR. CAVANAGH: All right, let's start from there then. Now, these files, where are they?

A They are here.

Q On this transaction involving Dick --

A Yes.

Q -- is this what you call control sheets?

A Yes.

Q And according to that Phillips had earned \$95 on the sale Wapiti to Dick, right?

A If it was a completed sale, that's what he would get.

Q Then on the sale Columbia to Bodis it shows --

A \$142.50.

Q \$142.50?

A Right.

Q And then on the sale Dick to Columbia the commission is calculated at \$425 but shows a notation "No commission to salesman"?

A Right.

Q At that time Mr. Phillips was receiving commissions of 40 per cent of the commission charged?

A That all depends.

You see, there is a selling salesman or a listing salesman, it all depends. The total commission payable to a salesman is fifty per cent.

Q It would be both listing and selling?

A Yes.

Q If he is not listing it's forty per cent?

A It all depends on what type of listing it was.

Q This Wapiti Builders deal was in September 1963, was it?

A Yes.

Q And the deal Dick to Columbia would be contemporaneous at the same time?

A Yes, about the same time.

Q Then Columbia to Bodis deal was made in October 1963, was it?

I am not sure - the adjustment date was October.

A The adjustment date was October 1st.

Q Then, according to you, everything remains frozen for how long?

A Until all the payments are in, either on a mortgage or in this case it was set up for the mortgage to be discounted, but it was not sold; it could not be sold.

Q Well, supposing you had set it up on a long pay out, a fifteen year mortgage, would the salesman have to wait fifteen years?

A I guess he would, unless he wants to make a settlement, I don't know; but he would have to wait because I couldn't pay out before it was actually collected in.

Q Is there any statement of this ever given to the salesman?

A They are aware that they don't get any commission on Columbia Mortgage deal until all the funds are in.

Q I see. No statement is ever given showing this deal and the potential?

A It is not in writing but they are all aware of it.

Q Now, on the Bleich to McCracken, I calculate - forty-five per cent I believe he is entitled to on the Bleich

Q (Cont) deal - forty-five per cent on \$703 is \$348; does that sound about right?

A (No answer)

Q In any event that deal was in September 1961, was it?

A Yes.

Q And he was entitled to forty-five per cent of \$703 if completed, you say?

A Right.

Q If all the other deals were complete?

A Right.

Q Then on the sale McCracken to Columbia, it is set up that there is a \$550 commission. Who gets that if the deal is successful?

A There is no commission payable when Columbia Mortgage purchases a house.

Q Why did you set up a commission then? Does this go to the company?

A This is only -- no, it does not.

It is taken into consideration when it is resold.

THE COMMISSIONER: The McCracken situation is not a sale, it is a purchase by the company.

MR. CAVANAGH: But a commission of \$550 is taken and set up on that deal, and that is calculated as

MR. CAVANAGH: (Cont) part of the second mortgage or you attempted to recover that on the resale of the house, is that right?

A That's only there to show us that we have \$550 when we purchased that house; in other words we purchased at \$11,550 and there is \$550 commission. Now we could turn around and sell that house for exactly the same price and receive \$550 less legal fees on the deal.

Q Well, when you recover that \$550, who does it go to?

A When it is resold?

Q Yes.

A When it is resold the salesman that is involved. It's a Columbia house.

THE COMMISSIONER: Money is kind of academic in the McCracken case, isn't it? They take up a second mortgage, and the first mortgage foreclosed, and any real dough disappeared into thin air for Philipzyk, Kellough, or anybody else.

MR. CAVANAGH: That's true.

But I would like to pursue this a little further.

Q MR. CAVANAGH: The sale from Columbia to Koopman was in September 1961, the commission set up was

Q (Cont) \$300 of which Mr. Phillips' share is shown as fifty per cent?

A Right.

Q So all these things were then added into the second mortgage, is that right?

A Right.

Q And when was the second mortgage, when was it determined that the second mortgage was no good and the property was gone?

A When we were advised that the first mortgage people --

Q When, can you tell me from the file?

A May 1962.

Q In May 1962. Who is Norm Murray?

A The branch manager.

Q There is a ledger sheet in this file showing Norm Murray got a Pontiac out of this deal for \$600, is that correct?

A That's only part of the payment.

Q All right. But the branch manager gets himself \$600 out of this deal but the salesman gets nothing, is that the result of all this?

A No.

Q Didn't he get a Pontiac?

A But he paid for it.

Q Isn't it treated as commission to him?

A No, he paid me money for that car.

Q Was it a fair price, do you know?

A He thinks it was.

Q Was any statement of this transaction, any explanation of this in writing, ever given to Mr. Phillips?

A He must have known there is a car involved because he was involved in the system. He took the car in. He could have bought the car himself if he had the cash.

Q That's not what I asked you. I asked you if there was any statement in this transaction given to Mr. Phillips about what happened to his commission.

A Well, I don't know whether I had told him about it. I imagine the manager had.

MR. CAVANAGH: I see. That is all. Thank you.

MR. BOWEN EXAMINES THE WITNESS:

Q How much did Mr. Murray pay for the car, Miss Kolody?

A He took over the lien on the car and paid fourteen hundred or fifteen hundred dollars.

Q Fourteen hundred dollars or fifteen hundred dollars, did you say?

A Something like that - \$1,470.

MR. BOWEN: Thank you.

THE COMMISSIONER: Thank you. That is all.

(WITNESS RETIRES)

MR. MCGILLIVRAY: Mr. Larsen.

NIELS LARSEN, sworn, examined by MR. MCGILLIVRAY:

Q Mr. Larsen, what is your occupation, sir?

A Branch manager with Kellough Realty.

Q How long have you been a branch manager with Kellough Realty?

A Approximately ten years.

Q At what branch are with?

A The northeast branch.

Q Was Mr. Bob Phillips or Bob Philipzyk working for the company at your branch?

A Yes.

Q Can you tell me approximately how long he was at your branch?

A I would say six or eight months.

Q And he had been with other branch or branches of the company before then?

A Other branches.

Q Now first of all, sir, I am showing you Exhibit 28.

Q (Cont) The evidence is that these are monthly statements of Mr. Philipzyk's account with the company that were issued monthly and these particular ones go from May 1964 back until when?

A September 1963.

Q September 1963?

A Right.

Q Now, these statements are prepared by Miss Kolody downtown, as I understand it?

A That's right.

Q And then what is done with them?

A They are given to the branch managers in duplicate.

Q Now, were these statements given to you in duplicate?

A Yes, they were; one original and one yellow copy.

Q And would you tell the Commissioner what, if anything, was in fact done with the originals in the case of those statements which relate to Mr. Philipzyk's account?

A Every month I would say approximately between the 10th and the 15th these statements are given to us from our main office in duplicate copies, and the original copy is given to the salesman and the duplicate copy is kept on our private files.

Q Can you say that in fact the original, let us say the

Q (Cont) statement as of the 30th of April, was given to Mr. Philipzyk?

A Yes.

Q Did you personally give it to him?

A Yes, I did.

Q And these other statements during the six month period that he was with you?

A Yes.

Q Take this last statement, which is up to the 31st of May. Mr. Philipzyk had left your employment in May, as I understand it?

A That's correct.

Q Was this last statement given to him, do you know?

A I can't truthfully remember, but it was not given to him; it was mailed to him.

Q In any event the difference between the situation in April and May is what he is said to owe has been reduced by some \$52?

A I would have to see the statement.

Q Look at it, would you, sir?

A \$32.07.

Q Now, these similar statements were given to other salesmen, is that correct?

A Exactly the same.

Q Now, Mr. Larsen, I would like you to direct your mind to -- well, you made a report to Mr. Kellough of some information you got from two salesmen relative to something that the said Mr. Philipzyk was saying about Kellough, is that correct?

A That's correct, I received several.

Q Perhaps would you just tell the Commissioner what you can about that?

A To the best of my recollection what I heard was that these remarks that were made to Mr. Olthius and Mrs. Hansen were that --

THE COMMISSIONER: Did they come and tell you?

A Yes, they did.

THE COMMISSIONER: The two of them?

A Yes.

THE COMMISSIONER: When?

Not the day, the month.

A To the best of my recollection it would be in May of 1964.

THE COMMISSIONER: When?

A May.

THE COMMISSIONER: What did you do when you got that information?

A I relayed it to Mr. Kellough, the president of the company.

Q MR. MCGILLIVRAY: Just a second.

Let's be clear about this. You said in May of 1964. Mr. Philipzyk would be still working for you in May of 1964?

A No, he was not.

THE COMMISSIONER: 1965?

A 1965, that's right. That's a long time ago.

Q MR. MCGILLIVRAY: After he left your place?

A After he left the company.

Q Now, you say May of 1965. What did they say to you?

A They said they met him at a certain place they were inspecting and that he had said -- he was introduced to Mr. Olthius by Mrs. Hansen, and the conversation was supposed to have meant that Mr. Philipzyk couldn't understand Mr. Olthius working for a man like Mr. Kellough because any money he earned he would never get, he would have to sue for it; that Mr. Kellough was a crook, that he should not have a real estate license, should not be allowed to be an agent.

Q This is what they said to you. What did you do as a result of that?

A I reported it to Mr. Kellough.

Q And following that what occurred?

A Mr. Kellough asked me to have them come in to tell him himself.

THE COMMISSIONER: The two people?

A Right.

Q MR. MCGILLIVRAY: He asked you to have these two people come to the office to tell him themselves?

A Right.

Q How soon after they reported to you what they said had occurred did you pass this on to Mr. Kellough?

A I would say the next day.

Q And how soon after that did Mr. Kellough request you to have them go down to his office?

A I cannot remember.

Q I am not asking you days or hours.
Can you not give some approximation?

THE COMMISSIONER: A matter of days, a week?

A Maybe a week. I cannot say for sure.

Q MR. MCGILLIVRAY: Now, Mr. Larsen, I would now like to draw your mind to the Hearing of the Ethics Committee of the Edmonton Real Estate Board Co-operative Listing Bureau Limited which took place on the 17th of December 1965. First of all, were you present?

A Yes.

Q And you had come there why? Why were you there?

A Because I was the branch manager of the northeast branch where the complaint came from.

Q Now, can you tell the Commissioner just in your own words as best you can what occurred?

A To the best of my recollection I was questioned on the statements that were to have been made or what I heard from my employees, and I believe everybody that was there from my company was questioned on this. This is to the best of my recollection.

I just can't remember the exact questions that were put to me.

Q They were asking you what these employees had said to you?

A That's correct.

Q All right. What else occurred?

A Towards the end of the meeting there was some accusation made by Bob Philipzyk. I was called a liar two or three times. This stands out in my mind.

Q You reciprocated, didn't you?

Didn't you call Mr. Philipzyk a liar, too?

A I believe I said that one statement he made was a lie, to the best of my recollection.

Q Did you not, when Mr. Philipzyk said "You are a liar",

Q (Cont) didn't you stand up and say "You cannot call me a liar"?

A The third time -- I believe the second or third time he called me a liar I stood up and asked him not to call me a liar.

Q The purpose of standing up was, I suppose, to let him know that you meant business, that you would deal with him --

A Not exactly. I was peeved.

Q And is it fair to say you were sufficiently peeved that Mr. Philipzyk would have reason to be perhaps alarmed?

A I don't think so.

Q Did you advance towards him?

A I didn't.

Q Well, you stood up. Did anybody tell you to sit down?

A Yes, I was sitting beside Mr. Sims and he put his hand on my shoulder and asked me to sit down, and I did.

Q Mr. who?

A Bob Sims, I believe he was.

I am not sure of the name.

Q Sims? Have I got the name right?

A The gentleman sitting down there.

MR. MCGILLIVRAY: What's your name?

A MALE PERSON: Ed Sande.

A Ed Sande, that's right.

Q MR. MCGILLIVRAY: Anyway, he put his hand on your shoulder and said to you "Sit down" or something like that?

A That's correct.

Q Now, one other thing that has been raised: It is said that someone asked Mr. Kellough or it was a board member, or Mr. Kellough's recollection was Mr. Walsh asked what he Kellough wanted. Do you recall what Mr. Kellough said?

A I believe he said, "All I want is this man to quit lying about me."

Q There is or there will be some evidence that Mr. Kellough said, "All I want is for this bastard to quit lying about me."

A That's possible. I cannot remember.

MR. MCGILLIVRAY: That's everything I wish to ask you, Mr. Larsen.

MR. BOWEN: No questions.

MR. REDMOND EXAMINES THE WITNESS:

Q Mr. Larsen, do you recall whether or not Mr. Philipzyk

Q (Cont) was at that Hearing of the Ethics Committee?

A The Hearing I attended?

Q The Hearing of December that you attended?

A Yes, he was.

Q And do you recall whether Mr. Walsh was there or do you know Mr. Walsh?

A Yes, he was there.

Q Do you recall how the room was set up?

A No, I don't.

Q Just one more thing, Mr. Larsen.

Have you ever been contacted by the ombudsman or anyone from his office and asked to communicate to them anything about your knowledge of this case?

A I have not.

Q At no time?

A No, sir.

MR. REDMOND: That is all. Thank you.

MR. MCGILLIVRAY: My friend, Mr. Cavanagh, says he
will be a fair while.

THE COMMISSIONER: All right, we will adjourn.

HEARING IS ADJOURNED TILL 2 P.M.

HEARING IS RESUMED.

MR. MCGILLIVRAY: Sir, we reached the stage where Mr. Cavanagh was about to cross-examine Mr. Larsen.

NIELS LARSEN, sworn, examined by MR. CAVANAGH:

Q Mr. Larsen, you're quite clear that it was in May, 1965 that Mrs. Hansen and Mr. Olthius brought to you this story about Philipzyk?

A To the best of my memory.

Q Later in 1965 did you do something about getting them to put it in writing?

A Yes.

Q When was that?

A It was in the fall. I would say towards the end of
October, something like that. I can't just remember
the exact time.

Q At whose instructions did you do this?

A Mr. Kellough.

Q And, how was it done?

A I can't tell you. I didn't see it done.

Q Well then, let us jump to the Hearing in December of '65. At that time was a letter by Olthius and Hansen put in as evidence?

A Yes.

Q And, were you asked is this the letter and do you agree with this?

A I don't remember.

Q You don't remember. Now, prior to Mr. Philipzyk leaving your firm, he had been working at the Norwood branch where you were manager, is that right?

A The northeast branch, yes.

Q The northeast branch. Now, when did he terminate his services with the firm?

A I don't remember the date.

Q Do you recall the circumstances under which he terminated?

A Vaguely.

Q What do you recall?

A He asked me for an advance, I would say \$200 but I can't remember the exact amount, and I got him half of it, handed him the cheque and he either tore it up or gave it back to me, I can't remember which way it went; but threw it in the garbage can and said it was no good for him, if we couldn't do better than that it was probably time that he left and I agreed with him.

Q I see. And, where after did you have any contact with

Q (Cont) him or did you have anything to do with him until the following May, 1965?

A I did not and I had nothing to do with him in May either.

Q Perhaps we better refer to the cheques for a minute. Did you prepare a cheque as an advance at the time he asked for it?

A I don't prepare cheques.

Q Did you present him with a cheque as an advance?

A Yes, I did.

Q And, this was when he rejected it?

A Right.

Q What became of that cheque?

A I handed it back to the main office.

Q Are you able then to identify that cheque or not?

A I don't know if I can or not.

Q I am showing you a cheque dated May the 7th, 1964 in which the signature part has been torn out.

A This is definitely a cancelled cheque and it was written out to Philipzyk and I would say this is possibly the cheque. I cannot identify the cheque.

Q Well then, to assist us, that would apparently seem to fix the date of termination of employment as May the 7th, 1964?

A I can't remember.

Q I see. Now, when did you report to Mr. Kellough that Mr. Philipzyk had gone?

A I can't remember that time either.

Q It appears that the real estate branch of the government was not notified until the 9th of June. Is there any reason for that delay of a month?

A I don't know.

Q You don't know?

A No.

Q You are aware that for a man to continue as a salesman in real estate, he must have a bond?

A Yes.

Q It must be on file with the government?

A That is correct.

Q And, did you know anything about Philipzyk's bond?

A I knew nothing about it.

Q You must have known his bond was in order?

A I knew he had a bond.

Q Did you know what company it was with?

A No, I'm not sure.

Q So that you had nothing whatsoever to do with his bond during 1964?

A That is correct.

Q And, if you said otherwise on another occasion that was

Q (Cont) wrong?

A What would I have to do with the bond?

Q Did you tell Mr. Walsh you had something to do with the bond on one occasion?

A Not to my recollection.

Q I see. At the Hearing in December, 1965 did you give evidence concerning accounts?

A I don't remember.

Q You don't remember whether you gave evidence, do you?

A Some.

Q Or did you merely corroborate the letter of Olthius and say yes, that's what they told me. Is that all the evidence you gave?

A I can't remember exactly what.

Q It could have been that way?

A It's possible.

Q Did you have anything to do with Philipzyk's appeal to the Board of Directors or the appeal to the general membership?

A I attended the general membership appeal.

Q And, what went on there, was any evidence given or how was that handled?

A I would say the evidence was given there and was put --

Q Did you give evidence?

A No, I didn't.

Q Who did?

A I can't remember the people that gave evidence.

Q Was Philipzyk there?

A I don't remember that either.

Q I see. So that at that stage you can't remember what evidence you gave at these Hearings?

A Not all.

Q What can you remember, can you remember any of it?

A Yes.

Q All right. What evidence did you give?

A I believe the only thing, the only evidence that I gave, the only thing that I can recall is in regards to the letter.

Q That's all, thank you.

THE COMMISSIONER: All through, thanks.

MR. MCGILLIVRAY: (WITNESS RETIRES)
Next, sir, I would like to call

Mr. Philipzyk.

Right up here, sir.

ROBERT J. PHILIPZYK, sworn, examined by MR. MCGILLIVRAY:

Q Mr. Philipzyk, what is your occupation, sir?

A Well, I followed the salesmanship. I have been a salesman in various lines, automobiles, machinery, and I have spent I would say about twelve years or longer in the real estate business.

In the last four years, well unfortunately I wasn't able to get any what you would call steady job, so I worked on and off here and there at odd jobs I could get, mostly in hotels; desk clerking in order to earn my bread and butter.

Q How old are you today, Mr. Philipzyk?

A I will be sixty years of age on the 6th of next month.

Q I wonder if you would tell the Commissioner when you first came to work for Kellough Real Estate Limited?

A Well, the first time I came to work for Mr. Kellough would have been about the summer of 1960 -- '64. I had worked under Mr. Kellough previously, but for Weber Brothers as he was the manager of Weber Brothers at that time.

Q Am I right, sir, in thinking that you started to work for this company, Kellough Real Estate Limited, in January of 1961?

A Well, that was the second time, Mr. McGillivray. I worked for Mr. Kellough once before for a period of

A (Cont) about oh, I would say two years, something like that.

Q That was sometime before?

A Yes.

Q Then there was a break?

A That's right.

I left there and then I went down to work for Weber Brothers Agencies.

Q Just dealing with this last period, sir, you did start out in 1961?

A Well, it was in the fall of the year. About, oh, I would say the latter part of October or the beginning of November that I happened to meet Mr. Kellough on the street one day and he asked me what I was doing, and I told him. So he asked me that I was wasting my, told me more or less that I was wasting my life away at what I was doing, and tells me that there was a job for me in real estate --

Q I'm just trying to get the date when you started, sir. You met him in the fall and he --

A Yeah, that was in the fall of the year. It was about the end of October I believe or beginning of November sometimes.

Q Well, did you not start in January, sir, of --

A Well, at that time Mr. McGillivray, it was Trotter, McIntyre and Kellough actually when I started the first time with Mr. Kellough. And I was with them there in the office, I think it was on about 91st Street and 118th Avenue for a short while, I believe it was a couple months till they, I don't know what happened there. They dissolved the company or something and Mr. Kellough had started a company on his own and he opened up an office in Jasper Place and this is where he asked me to go to work for him then.

Q All I'm trying to ascertain, sir, is that you started with the company, Kellough Real Estate Ltd., quite altogether from what you may have done earlier. You started the last time in January --

A Well, that's right. It was sometimes in the beginning of January.

Q Now, I'm just trying to get a few dates sorted in everybody's mind here and we'll get back to those things.

And then, sir, you stayed with that company until sometime I believe in 1964?

A Yes. It was around about I would say the 7th or 8th day of May. I was away for about two months

A (Cont) because I was very sick and the doctor advised me to take a leave from work for a couple of months and I went to Vancouver. And when I was in Vancouver, I was under a doctor's care there, under Doctor Reid of the Seymour Clinic and I left Vancouver on the 5th of May and I returned back here, I came down through Dawson Creek, Prince George, and I got to Edmonton here it was about 4:30, five o'clock that afternoon on the 6th. And, I went right directly to the office where I was employed under Mr. Larsen. It was on about 93rd Street and 111th Avenue.

Q What happened there, sir?

A Well, as I came back from Vancouver and had a little rest and the doctor treated me for my ulcer in my stomach, they were all happy to see me. Mr. Larsen and the other people that were working there, they were quite happy to see me back and they said I was looking considerably better, that my health had improved, and Mr. Larsen had made the remark "Well, you're a lucky son-of-a-gun, while you're away in Vancouver a couple of months, well, you made money" he said because when the salesman had sold one of my co-op listings in the meantime and made me around a hundred, oh I don't know, it's

A (Cont) twenty-five or thirty dollars listing for me.

Q Now, I believe within a short time of your getting back that the relationship between you and Kellough was terminated?

A Yes. I was in there that evening until I would say maybe seven or eight o'clock and I had to go out and get a room to stay because I had no home. My wife passed away just in August, just before that you know.

Q That's in 1963?

A Yes.

Q We'll come to that, sir --

A That's right, 19th of August, 1963. And my children, I got nine children; they're all grown up and they were on their own and I had no home. So I had to go down and I believe I went to the Leland Hotel and I got a room to stay down there.

Q You were explaining, sir, you got back after you had been ill for a couple months taking a rest under doctor's orders, you had been out at the Coast, and you came back. Everybody was glad to see you, you were going to work, and then I think your employment became terminated?

A Well --

Q I'm just asking if you can just tell us briefly when that happened in relation to when you got back?

A I'll try to explain it to you, Mr. McGillivray, to the best of my knowledge. I got back that evening or that afternoon about 4:30, 5 o'clock and after I had came in the office there and had a little talk with some of the people there, and everybody was friendly to me. There was nobody had made any derogatory or insulting remarks about anything.

The following morning which I'm sure it was Thursday, that we were supposed to write our ads to put in the Edmonton Journal for Friday, and if I still recall the secretary's name, her name was Yvonne, I think a French lady; and I believe if it was traced back, you can see that my ad was inserted in that Friday's paper because she put the ads in. And Mr. Larsen shortly after the ads were put in, it might have been around about oh, I would say ten o'clock, he left to go down the main office. And just before he left, I didn't have very much money and I asked Mr. Larsen if he would be good enough to ask Mr. Kellough to advance me a hundred dollars on my pending commissions.

A (Cont) And he said he would.

So, Mr. Larsen went down to the main office and he was there till it was close to noon, it was about maybe 11:30 when he returned back. When he said to me, he says, the boss wants to see you -- that meant Mr. Kellough. So, I said all right.

So I left the office there, it was about oh I would say just after dinner hour or maybe 12:30 --

Q Anyway, you got down to see Mr. Kellough?

A Yes, that's right.

Q And, you asked the manager, Larsen, for an advance?

A Yes.

Q He checked with Mr. Kellough and said Kellough wanted to see you and you went down?

A That's right.

Q All right. Then what occurred?

A Well, when I came down to Mr. Kellough's office, apparently he had some other people with him and he was quite busy and he couldn't see me right away, and I had to wait around because I --

Q Can we get to where you did see him, Mr. Philipzyk?

A Yes, I got to see him. It was oh, I would say about

A (Cont) one-thirty because I had to go out and put money in the meter two or three times while I was waiting.

Q Yes, sir, but anyway, you got in to see Mr. Kellough?

A That's right.

Q All right. What happened then, sir?

A Well, I got in to Mr. Kellough's office, you know at that time he was quite nerve-wracking. He had that habit of ducking his head like this you know, and he was sitting there for a few minutes and he didn't say anything. So finally he came out with a remark, and he says well, this is a hell of a thing. He says where a salesman can take two months holidays he says to go to Vancouver, and he says here I am he says, I don't go on holidays he says, I'm here at work and he said I'm paying office rent there for a desk, and he says nobody to occupy it.

So, I went on to explain to Mr. Kellough, I said Mr. Kellough --

Q You explained this was under doctor's orders?

A That's right, Doctor Gorman in the Professional Building was the one who actuated me and told me and recommended I should have a rest --

Q Fine. You explained you were under doctor's orders,

Q (Cont) then what happened?

A Well, he went on and then he started to reprimand me and asked me about some cheques I was supposed to cash that belonged to the hospital. And, he said to me, he says; those cheques belong to me he says. He said I paid for them and I need that money he says, to run the company. And he says, I don't see, he says why you went to work and cashed those cheques. I said Mr. Kellough, that is what I was paying \$12.50 a month for getting insurance to have the coverage for my wife.

Q All right, sir. Did he eventually get to the point about your advance?

A Yes, he did. As a matter of fact, I just don't recall to the best of my recollection Mr. McGillivray, just what actually had taken place. But I seen the cheque for \$100. It was laying on his counter. Now, I seen him grab that cheque and it appeared to me as if he had tore it up. But now whether he had re-written another cheque after that, or whether he just mutilated that cheque and put it away. But anyway, he never give me a cheque or I never endorsed it or ever cashed it.

Q Why didn't he give you a cheque, was a cheque for

Q (Cont) \$100 written out to you?

A Well, I seen my name on there, yes. R. J. Philipzyk, I seen it in writing there.

Q Why wasn't the cheque given to you, sir?

A I don't know. It was something there that, he was mad at me and he wouldn't give me the cheque, and I figured rather than just sit there and argue with him any longer, I figured well, the best thing for me to depart and just leave.

Q Then you left and went back I suppose that day to the northeast office?

A Yes, I did sir. Yes, I got back to the office there it was shortly after 2 o'clock, I would say maybe twenty after two or two-thirty, and before I left the McLeod Building, Mr. Kellough's office, I noticed that Mr. Larsen was back there in the office.

Q Yes. You got back to the northeast office and to sum it up, I think your version is that Mr. Larsen said you're finished?

A Well, just - if you give me a chance to just explain it Mr. McGillivray, I'll give you a little explanation.

Mr. Larsen came back from the main office, it was approximately 3 o'clock and he walked

A (Cont) in the office and he had a coat on, and as he opened the door; he says to me, he says come on in the office with me. And he took his coat off and he hung it up on a hanger and he sit down and I had a chair and I sat down at his desk. And Mr. Larsen said to me, he says well, I'm sorry he says that we have to part company, but the orders are from Mr. Kellough that you are fired and that you are to leave the company immediately. So I replied, I said well, that's the orders well maybe I'll just leave.

Q And, you left?

A I did - I went and picked up my books and what I had there.

Q Now, we have come to what occurred after that-just a moment Mr. Philipzyk, I would like you to tell the Commissioner whether you received the original of these monthly statements that are said to have been given to you monthly?

A Mr. McGillivray, to tell the honest truth, there was months there and I never got a statement from Mr. Kellough there for some time two and three months, never mind monthly. But, the last statement I had received from Kellough was for the month of December. I received it the beginning of January

A (Cont) sometime and on that statement there quoted something that oh, I don't know about 18, \$1,900 and I had a credit of \$100 and some dollars, but up to this very day I never ever did get complete statements. As a matter of fact, I have a stack of them there in my briefcase that were rolled up, the ones that I got. But they were sometimes far in between. Sometimes I never got a statement from there for two, three months.

Q Well, in any event, sir, do I understand that at the end of December of 1963 you would get a statement that showed you owed some \$1,900?

A Well --

Q -- and, this is what this statement shows?

A Well, it read something like this in here, yes. No, that wouldn't be the statement here. That does not jive and correspond with the statement I have and give to Mr. Cavanagh.

Q Have you an original statement Mr. Cavanagh?

A The statement I give to Mr. Cavanagh, that I got for the month of December; but I got it oh, maybe around the beginning or around the 10th of January was a statement on the very bottom here quoted there a credit balance of 800 and some dollars.

- Q Well, the statement shows that the end of December, you owe \$1,915 and then you received credit for three, about \$425. There is another advance of \$50 and other expenditures, and at the end of January it shows you owe \$1,577?
- A Well, that is I couldn't verify that Mr. McGillivray because these statements --
- Q Well, let's look at this statement. Here is one for November and pendings December 31st, and this shows the balance for you owing \$1,700, another advance in December of \$150 making it \$1,950.81, and then they say pendings, a balance of \$859 credit?
- A This looks more like the statement that I had given Mr. Cavanagh, December four '63, but, I didn't receive this until the beginning of January.
- Q Yes, this is a copy of this, is it not?
- A Well, it could have been. This looks very, very, familiar to what I had given Mr. Cavanagh.
- Q Well, this is what Mr. Cavanagh has just handed us, sir, as being what you gave him?
- A That's right, and this says over here, December 31st balance \$859.31 credit.
- Q Well, that's with the pendings, isn't it? The particular statement, sir, which is part of Exhibit 23,

Q (Cont) I think perhaps you should, you will confirm, sir, that this document, page 4 of what I'm sorry, Exhibit 28 is a copy of the document that you have?

A It could be, yes, a carbon copy, yes.

Q What we are talking about sir is, you will see the way it reads.

And, as I understand you that sometime after the 31st of December, in January sometime Mr. Philipzyk or later on, you get this statement showing that you owe \$1,915, but in respect to pendings, you have a credit of \$859.91?

A Well, Mr. McGillivray, I never; to the best of my knowledge to tell the truth, I never ever received another statement from Kellough's. This would be the last statement that I received before I left to go to Vancouver.

Q All right, sir.

A And, when I came back from Vancouver after being away almost two months, there was no statements for me in my desk, and there was no statement --

THE COMMISSIONER: Why didn't you ask for some?

A Pardon?

THE COMMISSIONER: Why didn't you ask for some?

A I did, sir. I went down to Kellough's office one

A (Cont) time about June --

THE COMMISSIONER: Why didn't you ask Mr. Larsen, he was delivering them?

A Well, I wasn't the accountant or the secretary of the company, I was just a salesman and I think it was --

THE COMMISSIONER: Well, if all of the salesmen have these statements, why didn't you ask for yours?

A Well, as I was told to leave the company, I figured that they were going to forward me --

THE COMMISSIONER: No, no. Why didn't you ask for one in January or November, they're monthly statements, didn't you want to know where your life was going?

A Well, the thing is in here, when you're selling real estate and you have other things on your mind, it doesn't come to your attention about the statements. Sometimes the manager brings the statement and he hands it to you or leaves it in your desk. And other times there was no statement there, but then there was - it was forwarded, I had some statements that shows you on there that they are for maybe two or three months. They weren't just a monthly statement.

Q MR. MCGILLIVRAY: Mr. Philipzyk, the only point I deem to make or to try and point out is were you aware in the, before you went away on the doctor's orders for a couple of months in the Spring of 1964, that you had advances which resulted in your being indebted to the company in the amount of something like \$1,500?

A Well, Mr. McGillivray, to my conviction and as far as I was concerned, with the sales I had made I wasn't impressed that I was indebted to the company with the deals that I knew I consumated, and I put in a lot of hard work and effort to make these deals, that I had commissions coming to me, I wasn't indebted to the company. But it was just a matter that after asking Mr. Kellough maybe three or four different times about these accounts, he told me that these commissions were in pendings and he said they weren't finalized, but when they were finalized, I would be given the credit for them and they would be credited to my account.

Q Now, sir, on those commissions, my understanding is that they related to the McCracken transaction, the Koopman transaction, the Dick transaction.

A And, there was considerable other deals --

Q -- there was also Pullishy --

A That's right, there was also a couple other deals that were involved in the transaction.

Q Can you tell me what those are, sir, I mean let's have the files here?

A Well, Mr. McGillivray, I was engaged as a salesman to do a job is to go out and get listings and --

Q Have you something in mind, Mr. Philipzyk, that we can get the information, that's what we are here for?

A Well, that's only my best way I can explain it to you. However, I contacted this Mr. McCracken who lived at around 161 Street and 108 Avenue and after making a few calls and talking to these people, and he told me that he was working on the south side then for the Alberta Phoenix Pipe Co. and he was a parttime truck driver for Acme Towing --

Q Mr. Philipzyk, I don't want to interrupt you, sir, but really I think if you answer, try to direct yourself to my questions, we will get along a - you know, a little faster.

A Yes I know, I'm assuming too much, I'm sorry. I always try to explain the best I know how.

Q I don't want to stop you doing that, sir, but what

Q (Cont) I am trying to say to you is this, as I understand you, you felt that in respect to certain additional transactions that he didn't show in the statements that you were getting, that you had some money coming?

A That's right. And when I told --

Q Just a second, now. And as I understand you further, the transactions which you have in mind as being the source of the money that should be coming to you --

A That's right.

Q -- they are, one, the McCracken transaction?

A That's right.

Q Two; the Koopman transaction?

A That's right.

Q Three; the Dick transaction?

A That's right. It was a new house I sold to Dick.

Q For, something, with respect to the Pullishy transaction?

A That's right, it was --

Q No, no, let's get the list of them.

A Okay.

Q And then lastly, there was something in respect to the Marks and Van Gunset transaction?

A Yes. At that time I never ever been credited for it --

Q Just one thing at the time, sir.

Now, were there any other transactions that you think you have got any commissions coming from, other than those five that we have mentioned?

A Mr. McGillivray, to the best of my knowledge I know all told there was about five sales that I should have been credited for or at the very least, statements shown what had happened with the money or where the money went to, which I never was given any statements for.

Q Well again sir, did you at the time say in respect to this sale, I had something to do with this; I mean did you take it up at the time when somebody else was getting a commission for sale that you felt should be yours?

A Well no, I wasn't so much concerned about other people or other salesmen's commissions or what their transactions were because I never interfere with other people's sales.

Q All right. You have given me these five transactions where you have felt that you have something coming that you weren't being credited?

A That's right.

Q Well, I'm trying to find out, sir, if there are some

Q (Cont) transactions in addition to that that you can tell us about and we can inquire into?

A Well, not to my knowledge Mr. McGillivray, I can't recall everything. This is a long time back, seven years ago. However, in my opinion and estimation of the commissions I have earned, it was in excess of a thousand dollars on the sale of these three houses plus this Pullishy deal there which because that I negotiated the sale and the branch managers approved, the house was taken at around \$8,400 and sold for \$9,800 which was a margin of a \$1,400 and he will probably recall and see where I was credited \$23 for the commission on it.

Q Mr. Philipzyk, I am going to deal with each of those transactions with you and we'll deal with them and get your side of it. So, let's not deal with it now, I'm just trying to get the picture. As I understand it, you don't have any dispute about the advances you got being in accordance with the statements --

A Not the advances that Mr. Kellough had given me, I approved them and I say I accepted them because I signed the cheque. They were always given to me by cheque.

Q Your dispute with him is in respect of these transactions that you mentioned?

A That's right.

Q All right, sir. We'll come to those in a moment. I'm just trying to see what the area of dispute is. And, you heard what Miss Kolody had to say, you were entitled to say what you feel, we'll come to that in a minute. Now, in any event sir, you left in May of 1967 or were fired, depending, you say you were fired?

A That's right.

Q All right. I'm sorry, I said '67; we're talking of May of '64?

A '64, yes.

Q And, you had been with that company since January of '61?

A Yes, with Kellough Realty.

Q Now, after leaving or after you were fired from Kellough in 1964, I believe you went out to the Coast where your son was graduating?

A That's right. He was graduating in law and he is a legal solicitor now practicing in Vancouver.

Q And, when you were out at the Coast, your son suggested it might be a good idea if you became an agent yourself --

- A That's right. He said you're foolish to be working for somebody else with the experience you have you're better off --
- Q And, you came back here and you decided that perhaps the name Comfort Real Estate would be a good one, because that's what people think of in houses --
- A That's right.
- Q And, you went to see Mr. Walker of the Real Estate --
- A Commissioner of Real Estate.
- Q -- Commissioner of Real Estate, you felt --
- A That's right.
- Q And, Mr. Walker described how you applied for an agent's license?
- A Well, he gave me an application to fill out.
- Q And anyway, sir, you wrote an exam and you didn't pass the first time?
- A Yes.
- Q And then what did you do, decide not to write?
- A Well, he gave me another exam that I could have written but, what, the picture I got of the whole thing, it wasn't probably that I had failed on the exam is more or less I wasn't able to get the \$5,000 bond, Mr. McGillivray, and the company wouldn't

A (Cont) tell me.

I inquired about it. Even I had the answers to back it up, they just denied me and wouldn't give me any explanation of why they wouldn't grant me this bond.

Q Well then eventually, sir, you then decided to go back to selling?

A Well, I happened to read the paper one night and I noticed the ad in the paper --

Q Mr. Philipzyk, I don't really need all the details. The fact is that you then went to work for Mr. Walsh of Burton Real Estate?

A Burton Real Estate, that's right.

Q And at this time your bond that you had earlier was still in existence?

A That's right.

I applied for the license and I got the license and then I went to work for Pat Walsh.

Q And, I believe you started working with Mr. Burton in July was it, 1964?

A Yes, the beginning of July sometime.

Q I mean Mr. Walsh. Now, we then learned from Mr. Walker that in about September of that year, now, your bond was \$1,000?

A That's right.

Q And, in September of that year, a bonding company gave you notice that what?

A Well, I have a letter which I am positively sure it was from the superintendent of insurance, Mr. MacPhee stating that I was given I believe it was sixty days notice that my bond would be cancelled and I would have to get a new bond.

Q Do you know to this day why that bond was being cancelled?

A I don't know, sir but I did find out, I did find out upon checking as closely as I could, I found out what was the reason for my bond being cancelled.

Q Well I guess, sir, we're dealing in lots of hearsay. Will you tell us what you found out?

A Well first of all, I had written a letter to the Canadian Surety Co. and I gave them the explanation to the best of my knowledge. I'm not very much of an educated man, I only have Grade 2 school education, but I went on, I explained that I needed this bond very urgently because I needed the bond in order to have my license in order to earn my living, and I wanted him to tell me what have I done or what was the reason that my bond is being

A (Cont) cancelled. Well shortly after I got a reply from them and they were very, very vague about telling me why. They just more or less brushed me off and said they didn't care to renew my bond and --

THE COMMISSIONER: -- It's always general like that when they cancel a bond, or cancel insurance for that matter; they just cancel.

Q MR. MCGILLIVRAY: But anyway, sir, you didn't know that and you wanted to find out what the reason was if you could?

A That's right.

Q Did you find out eventually?

A Well, Mr. Walsh had investigated to a certain extent --

Q What's your employer?

A That's right.

Q Mr. Pat Walsh?

A That's right.

And he had made inquiries to, I believe it was Knox Robertson Insurance. I believe that Mr. Walsh had bonds for his other salesmen there, and apparently Mr. Walsh didn't get a very satisfactory reply.

I don't know just what Mr. Robertson had told him, but it came around that Mr. Walsh had told me one day he said, why don't you go down and see Knox

A (Cont) Robertson and talk to him.

Q Knox Robertson is what, the agent issuing the bonds?

A Yes.

Q Al' right, sir?

A He is the man that sells or handles the bond for Canadian Surety Co.

Q You went to see him?

A That's right.

Q What did you learn there?

A Well, as I came up, it was about oh ten o'clock in the morning; I was met by a gentleman there. He was an English chap. I don't know now whether his second name was Leslie or whether his first name but anyway, I spent considerable time in his office and he went on to explain to me that while it's regretful they couldn't help me get a bond, but the instructions were I wasn't going to be able to get a bond.

THE COMMISSIONER: He got a bond, didn't he?

MR. MCGILLIVRAY: He had one and it was about to be cancelled. And he was seeking to get another one, is that right?

THE COMMISSIONER: Didn't he get another one?

A From a different company, Your Honour.

THE COMMISSIONER:

What does it matter?

A However, just when I was about ready to leave this Leslie, or Mr. Leslie's office, whatever you call him, Mr. Robertson just happened to walk in and this Leslie says to Mr. Robertson, he says oh this is Mr. Philipzyk he says. He is here concerning trying to get a bond he says for a real estate licence. And Mr. Robertson says oh yes, he says I remember, he says I know all about him. He says I talked to Marshall Charter, the manager of Canadian Surety Co., and he says unfortunately he says, Mr. Charter told me that Mr. Philipzyk's bond has been cancelled because Mr. Kellough had made a complaint to the Canadian Surety Co. that Mr. Philipzyk owed him a lot of money. And he says that he why he wouldn't consent to have Mr. Philipzyk's bond renewed.

 So, at that moment, excuse me Mr. McGillivray, Mr. Charter or Mr. Robertson says to me, he says why don't you go there. It's not very far, he says why don't you go down and have a talk with Mr. Charter and see what he would do about it. So I did.

 I got in my car and I drove down to 121st Street and --

Q Anyway, you got to Mr. Charter. What did he tell you?

A Well, I didn't get to see Mr. Charter but his assistant was there. His secretary met me and she asked me what was what I wanted and I told her I would like to see the manager of Canadian Sureties. And she says well, the manager, Mr. Charter is out but his assistant is there. So, he called me in the office. So when I came in, he asked me what my trouble was, and I told him. I told him, I says well I'll tell you why I'm here. I said --

Q You told him why you were there. What did he tell you?

A Well, for a minute he was very reluctant to tell me very much. However, after I got insistent, I said to him I says look, I'm here for a purpose. And I said I'm here to find out why was my bond cancelled and I said what wrong have I done that I deserve to have my bond cancelled. So, finally he pulled out my file and though he didn't show it to me but he opened it up and he says, why Mr. Philipzyk he says, Mr. Kellough had made a complaint here that you owed him a lot of money and he says that is the reason he says he ordered your bond cancelled, and

A (Cont) he said he wouldn't content to have it renewed.

Q All right sir. Now, in any event you got a new bond somewhere?

A Well, after a lot of trouble and a lot of goir
--
around Mr. McGillivray.

Q Now, at this point were you annoyed at Mr. Kellough?

A Well, the incident what happened between him and I just after my wife's death --

Q We're going to come to that, sir, just in a few minutes. Did this annoy you?

A Well, it did annoy me and I said to the gentleman --

Q Well, fine. I just want to get your reaction to that.

Now did you shortly, sir, after that go to your solicitor and ask him to get an accounting from Mr. Kellough?

A Well, to the best of my knowledge I remember I went over to see Mr. Spitz. He was up in the Weber Brother Building which I'm pretty sure just next to the Macdonald or the McLeod Building there.

Q Yes.

A And, I went on to explain to him, I told him what my trouble was. That I was notified by the superintendent

A (Cont) of insurance that my bond was being cancelled, I was given a couple of days or a couple months notice and I told him that I was over to the Canadian Surety Co. and had a talk with the assistant manager and he told me that Mr. Kellough had ordered my bond cancelled because he claimed I owed him a lot of money. And, I said to this chap, Canadian Surety Co., I said that is not true. I said I don't owe Mr. Kellough any money. I says as a matter of fact, I still have money coming from Mr. Kellough I says, and if it's squared up according to my commissions, I says, I should have about \$125 to \$150 coming back to me.

Q Well anyway, there is a letter, sir, dated the 16th of November, 1964 from Mr. Spitz to Kellough Realty Ltd.?

A Hmm mm.

Q Mr. Spitz was acting as your lawyer in writing that letter?

A I'm sorry.

Q Well I mean, I'm asking you, sir.

A ...requested to obtain from you a statement of account dealing with commissions by our client and all sums paid to our client and further a copy

A (Cont) of the Agreement in terms of which your, our client was employed by your firm.

We should be pleased to receive the above mentioned at your earliest convenience.

Q Now, this was written by your lawyer Mr. Spitz?

A That's right.

Q To Mr. Kellough at your request?

A That's right.

Q All right, sir. And, I am showing you a copy of a letter dated the 3rd of December by which Mr. Kellough replied and said that he had enclosed a statement of accounts between you?

A Oh yes. Well, if he enclosed it to Mr. Spitz I never ever got the statements or I never even got as much as a letter from Mr. Spitz.

Q That's what I wanted to ask you, sir.

Did you, did Mr. Spitz, your lawyer, not advise you --

A Never, never Mr. McGillivray.

I never to this day ever got a letter from Mr. Spitz or I phoned him about three, four days later and asked him if he had gotten these statements and he said he never heard from Mr. Kellough. And, he kind of ill advised me of getting a bond there while I was there and therefore, I didn't bother ever going back

A (Cont) to see him again.

Q Well, Mr. Spitz's first letter, the one we just looked at is dated November 16. If you inquired within three or four days that would only be November the 20th, this answer is December the 3rd?

A That's right, that's a long time after.

Q You say, sir, that Mr. Spitz never told you that he had the statements?

A Never, and he knew I was working for Burton Real Estate and he knew that I was staying at the Leland Hotel because I told him where I was staying, he asked me for my address.

Q And sir, you didn't go back to Mr. Spitz after --

A I never went back to Mr. Spitz's office to this very day.

Q All right, sir. In any event, you went back to Mr. Spitz three or four days after --

A I phoned him.

Q Or phoned him?

A Yes.

Q -- and then you never heard from him again and --

A I never ever heard from Mr. Spitz or got a letter from him to this very day.

Q All right. Now, I want to take you to May, to some-

Q (Cont) time in 1965 when it is alleged by Mrs. Hansen and Mr. Olthius that certain conversation between you and them occurred. You heard their evidence, Mr. Philipzyk?

A Yes. I was sitting in the chair there.

Q Now, did you, first of all meet or come across them at or about the place they say, that is in front of the Risch house?

A Well --

Q We'll get to your turn in just a second. I'm trying to get a couple of --

A Well, where I parked my car, Mr. McGillivray, it was just a little north of the Risch house. I had two houses listed there.

Q And, you did have some conversation with Mrs. Hansen on that occasion?

A Just a very short conversation of maybe a dozen words.

Q Mr. Philipzyk, I am going to ask you what exactly occurred and you will tell us, I'm just trying to get a few preliminary let us say outlines of such things as whether you even met, whether you met the same place, but I take it that somewhere in the vicinity of the Risch house, you did have a conversation

Q (Cont) with Mrs. Hansen. Can you tell me when, approximately?

A Well, to the best of my knowledge, Mr. McGillivray, somewhat I recall back and where I have been and what I have done, I would say it was in the vicinity and approximately around the middle of May. It might have been the 18th, 20th of May, but I would say it was around the middle of May.

Q Of 1965?

A Yes, that's right.

Q All right.

THE COMMISSIONER: Did they ever meet, I would like your - after, did they ever meet there again at that location in a car?

A Never, sir.

Q MR. MCGILLIVRAY: Now, sir, I am going to ask you and perhaps the Commissioner will direct a short adjournment now, but my next question will be, will you just describe what exactly occurred in your own words on that occasion?

A Well, if you give me about one minute Mr. McGillivray I'll give you as close an explanation of what had taken --

Q Just a second, Mr. Philipzyk.

THE COMMISSIONER: You would like to adjourn?

MR. MCGILLIVRAY: Well I wonder if the Reporter
shouldn't have a break.

THE COMMISSIONER: Right now. Okay.

HEARING IS ADJOURNED.

HEARING IS RESUMED.

R. J. PHILIPZYK RE-ENTERS THE STAND, QUESTIONED BY MR.

MCGILLIVRAY:

Q Mr. Philipzyk, we established just before we
adjourned that you had met Mrs. Hansen near the
Risch house in about the middle of May, 1965?

A Yes.

Q Will you just in your own words tell the Commissioner
how this meeting occurred and what happened there?

A Well, if I have a little chance to start at the
beginning, Mr. McGillivray, I'll give you an
approximate idea of what had taken place that
morning.

Q All right, sir.

A About ten o'clock that morning I drove down on
95 Street and I came down to 111th Avenue and 95th
Street. I was going to park my car in front of
this little coffee shop where I was going in, there

A (Cont) were several cars and trucks parked so I had to go a little north to down to 112 Avenue and then I went east and came around the corner to 94th Street and I parked my car there facing south. And, I walked over to this coffee shop. I knew the people that run the coffee shop there. And I went in there and I had some toast and coffee. I was there about maybe half an hour. When I came out from this coffee shop approximately about 10:30, and I went across 111th Avenue on 94th Street, I noticed a man and a woman crossing the street in the same direction, from the south to the north. But they were a little ahead of me so, by the time I got to the intersection, I noticed that these two people got in the car. The man got in on the driver's side and the lady went around the front and got in on the passenger's side.

So I walked over to my car, and as I started to proceed south I stopped at the stop sign on 11th Avenue. There was two or three cars coming from the east I had to let go by and --

Q Mr. Philipzyk, did you get the impression that the lady was looking at you as if you might be familiar?

A Well yes. The lady kept looking at me, you know, she kept looking at me but she didn't say anything. But, it looked as if somebody was familiar to me. However, they were about a quarter of a block away from me and I wasn't too close just to identify who they were.

Q In any event, you got in your car and then you started going west I believe when you went about seven blocks?

A Well, I went as far as 101 Street and 111 Avenue.

Q Well, you had been on 94th Street, you went to 101st?

A That's right.

I stopped at the red light on 101st Street and 111th Avenue.

Q And, I believe you noticed this other car --

A Yes, there was a car in between us --

Q Pardon?

A There was another car that pulled up that was right behind me. But I noticed in the rear view mirror a grey car that these people were in was following me.

Q You say a grey car?

A Yes, it was a grey car yes, about a 1963 or '64 Chev.

Q Yes?

A And, as the light turned on green, I made a right turn and I started to proceed to go north. And this car that was right behind me overtook me. I was going very slow, I was going around maybe twenty miles an hour and this man overtook me and he passed me. But in the rear view mirror I could see that this grey car was following me but was a little distance behind, about oh I would say maybe three-quarter of a block or something like that.

Q They both turned the corner with you?

A That's right. I kept on going north till I came to almost 117 Avenue and 101st Street where I had these two houses there.

Q You had gone seven blocks west and about six blocks north and you were going to go where you had two houses?

A That's right.

Q One was this Risch house?

A Mrs. Matan's was the one to the north and then there was a house in between and then there was the Risch house to the south.

Q So, you go to the first house and I believe, sir, and there is nobody home?

A Yes.

Q And then you go from there -- and you get your car parked more or less in front of that house?

A In front of Mrs. Matan; almost in front, a little bit to the south.

Q Then to come out of that house and you go back towards the Risch house?

A That's right. I started walking on the sidewalk.

Q The other car is somewhere in the vicinity --

A The other car was parked behind me by that time about I would say eight or ten feet behind me.

Q All right, sir. As you got near this car, what occurred if anything?

A Well, just about when I got even with my car I noticed a lady stuck her head out the window of the car and said "Hello Bob". She waved like this to me, motioned like this to me and says "Come over here. I want to talk to you".

Well, I was walking south anyway to go to this Risch house because the Risch house was south of the Matan house, and just when I came by their car, she started asking me some questions. She says to me how's Burton Real Estate? I says Oh, fine. She says are you making

A (Cont) lots of money. I says oh, I'm doing all right. And she still kept on talking, I just don't recall now what else she said. However, I went down just a few feet past the house and I went to the sidewalk where you go into the Risch house, I can show you a picture of it here, I have it here in my pocket, and shall I continue?

Q Oh yes, yes please.

A And, I went to the Risch house and I rang the bell. The lady came out, a lady about forty years of age, dark-haired woman --

Q I don't think we need deal with the discussion with her.

A Yeah.

Q Then you left the Risch house?

A Anyway I was there for about ten, twelve minutes after this lady told me that Mr. and Mrs. Risch were both out and they would be home sometime after six o'clock. So, when I came out of the Risch house, I came back to the sidewalk and as I started to walk north toward my car, Mrs. Hansen again was still looking out the window of the car. And, kept on asking me something pertaining to real estate, but I was a little reluctant, you know, I thought

A (Cont) maybe she was trying to quiz some information from me about these listings because salesmen often do that. They see when they expire and that so that they can steal a listing off you when that expires.

Q I see. Did she say anything to you about did you have a listing on that house, something like that?

A It was something to that Mr. McGillivray. I believe it was something like she was asking me regarding the Risch house there, whether I had a listing or whether it was co-op or exclusive or something regardless, but it was something pertaining to that.

Q Yes, sir. And, this was when you had come out and walking back to your car?

A That's right.

Q Now, is there a boulevard there?

A Well, in a way yes. There is about a space approximately I would say between the sidewalk and where the curb the cars were, their car and my car was parked, I would say about approximately twelve feet; something like that.

Q That is between the sidewalk and the --

A The curb.

Q -- the street?

A That's right.

Q All right. So, did you ever leave the sidewalk, sir?

A Well, to the best of my knowledge Mr. McGillivray, I could have left the sidewalk and walked on the grass because I was taking the shortcut to go over to my car which was like between their car and mine, to get into my car.

Q All right, sir. Now, on the way to the Risch house, she said Hi Bob, ^{how} are you doing. You said all right, and it was sort of left, that was about all there was of that conversation?

A That's right. I don't think there was ten or twelve words exchanged in the whole thing that I recall.

Q On the way back, she was asking you something --

A She was still asking me something pertaining to these listings or something about the house. I didn't pay much attention to her. I just, as I went by I said to her well we'll see you again sometime.

Q And, that's all that was said?

A Well to the best of my knowledge Mr. McGillivray, that's all the conversation I had with the people.

Q Now, specifically, sir, did Mrs. Hansen introduce

Q (Cont) you to the chap at the steering wheel?

A Oh definitely not. I swear to God she never.

Q Well, that's what you're doing, sir. On everything you say.

A That's right.

She never introduced me to Mr. Olthius.

As I was walking south of the Matan house going south I noticed a man sitting behind the steering wheel in the car. It was a very clear bright morning approximately eleven o'clock, the sun was shining quite bright, and I could see there was somebody sitting behind the steering wheel in the car but it appeared to me like a total stranger and I didn't bother going over to the car and talking to somebody which I never done in my life, to go over and interrupt and talk to somebody I didn't know.

Q You did know Mrs. Hansen?

A Yes, Mrs. Hansen, that's right.

Q Now, did you know that she was working for Kellough?

A No, I didn't Mr. McGillivray.

To tell you the truth, I worked with Mrs. Hansen for a short time in the northeast office where Mr. Larsen is there and sometime after that she had quit there, which I am possibly sure, and she went to

A (Cont) wo k for Weber Brothers Agencies.

And I haven't seen that woman after that. I haven't seen that lady from the time I worked with her there in that office until that morning when I seen her sitting in the car.

Q Well, when you left them working in the office, she was working in the office with you?

A Well yes, for a short while while I was there, I don't know maybe six months or something like that. And I don't know it was then she quit and she went to work for Weber Brothers Agencies you know, while I was there or shortly after. It was a while back and I just can't recall everything.

Q All right. Well now, again specifically Mr. Philipzyk, you say that there was no discussion by you about Mr. Kellough at all?

A There was no mention of Kellough or any money or anything else.

Q Now, sir, what you're saying, sir, is that the story that Mrs. Hansen and Olthius have told under oath to the Commissioner is a sheer fabrication, it's just a made up story?

A Well, I have a pretty good hunch where it came from Mr. McGillivray. I don't want to cause any trouble

A (Cont) or any elaboration, but I have a pretty good idea where this came from.

Q All right, sir. This is your day in Court. But first, sir, before you tell us your idea of where this comes from; I want to be clear on this, what you're saying is that they are lying when they say that you spoke to them about Kellough, that he owed them money - owed you money, and said that well, the things that they testified to?

A Well, that's not true.

Q That is not true?

A That is not true. I never made any statement like that to Mrs. Hansen. As a matter of fact, this gentleman Mr. Olthius I have never spoken a word and he never spoke a word to me because we were quite a distance apart and the man was a stranger to me and I certainly wouldn't want to go to work and disclose troubles of some kind I had with my employer with somebody I didn't know.

Q Have you any reason to give the Commissioner as to why Mrs. Hansen and Mr. Olthius would come here and completely make up a story about you, and indeed make up that same story which they put before the Edmonton Real Estate Board Co-operative Listing Bureau Limited?

A Mr. McGillivray, to the best of my assumption of my knowledge, what I can recollect, the whole thing is based on one thing: That Mr. Kellough was raving mad at me. He had tried two different attempts to put me out of real estate and he didn't succeed, and this time, the third time, he was resolved he was going to use different tactics. Something he can substantiate by someone that could back it up and that he could convince the Real Estate Board that I was guilty of making derogatory remarks or something about him and that is the reason they had found me guilty of making derogatory remarks and fined this \$100 against me.

Q Why do you say, sir, that Mr. Kellough was raving mad at you?

A Well, if you like to have me explain it to you thoroughly, I'll go on explaining it to you. If you don't mind me using the language, exactly what took place, before the ladies. There is some ladies here in the audience and I don't like to use this kind of expression.

Q Well I think perhaps they'll bear up, sir.

Now, you feel this is essential as part of what you feel should be before the Commissioner

A This was definitely the cause of the whole thing or why Mr. Kellough had this --

Q You tell the Commissioner what occurred?

A Well, Your Honour, on the 19th day of August at approximately about ten minutes to eleven, after my wife being in the hospital for twenty-two months --

Q This was 1963, sir?

A Yes, that's right. And, my wife passed away in the University Hospital. And after the doctor came down, Doctor Carvendale, and pronounced the wife dead; I had phoned long distance to Vancouver and notified my children down there and told them that Mother passed away. And I also phoned long distance to Athabasca and notified my two married daughters out there, Mrs. Burgess and Mrs. Pitman and, they agreed that they would come in about ten o'clock the following morning and we would make funeral arrangements.

Q Mr. Philipzyk, perhaps I can speed you up a little at this point. Eventually your children arrived and you and they went to the funeral home --

A That's right.

Q -- and you purchased a --

A Well, we made arrangements for the funeral, that's right.

Q And, I believe that you were torn between doing the best you could for your wife and the fact you didn't have too much money?

A Well, I had approximately about \$450 in the bank and after we picked out the casket for the wife and I had more or less two funerals to look after because my wife was to be embalmed here at Park Memorial and the hearse was supposed to take her body out to Athabasca to the funeral home and she was supposed to be buried in the family plot cemetery at Meanook.

Q Anyway, you were doing the best you could?

A That's right.

Q With the limited means you had at that time?

A That's right.

So, after we made these arrangements with Mr. Smolyk and Charlie Night, the guy that's in charge there, and I found out that the funeral expenses were like Mr. Kellough remarked here that I wanted the best \$800 is an exorbitant lie because it is not true. The funeral expenses were around \$600 Mr. McGillivray.

Q Six hundred dollars not eight hundred?

A That's right, \$600.

Q Mr. Kellough said he couldn't really remember --

A Well, he tried to exaggerate just a little bit.

Q Anyway, you remember it was \$600?

A Yeah, it was just a little bit, a few dollars less than six hundred but it was around six hundred dollars.

Q All right. Bear in mind, sir, explain to the Commissioner why you feel that Mr. Kellough I take it put these two salesmen up to manufacture this story?

A So about two o'clock in the afternoon after we made the arrangements I went over to see Mr. Kellough in his office, and asked him if he would be so kind as to advance me \$200 on my pending commissions that I wanted to pay for the funeral for the wife because my wife passed away the night before. And, he didn't say anything for a minute. He was sitting there nodding his head there for a few minutes, for a man that has just lost his loving wife the night before this was a rather insulting remark for a man to make. He says to me, he says "Boy" he says, "That is all." He says, that is about all you are good for is to traffic all the money you can get out of me. So I said Mr. Kellough, I said look, I'm working for you not for somebody else and I said I have some pending commissions. I said I

A (Cont) figured I would come to you and ask you for \$200 rather to go to the bank or someone else and ask for \$200.

Q You didn't ask him for the full cost of the funeral?

A Oh no, no, definitely not.

Q You asked for \$200?

A The bank can prove that where I cashed my cheques.

Q Yes?

A So, that was all right. After a couple moments he started making out the cheque for the \$200. That wasn't quite enough that he insulted me there, it's all ' was good for although I was a good salesman to bring in listings and sales, but all I was good for was to traffic all the money I could get out of him. Finally he had the courage to ask me, he says by the way, how much are you spending on your wife's funeral - as if it was any of his business - I said to him about \$600. He said to me, he said you're crazy. He said I can bury her for \$175.

In other words, Mr. McGillivray, he meant to tell me we were just a bunch of tramps off the street you know, although the poor little mother worked so hard to raise nine children you know, while I was going to do was throw her in a

A (Cont) cardboard box and get rid of her and disgrace on my family, you see. Of course, it didn't matter to Mr. Kellough.

So, when he made that remark, believe me Mr. McGillivray it was an insult to me. And it kind of made me mad. And I said to Mr. Kellough, I says Mr. Kellough I says, if you learned to mind your own business, I said instead of trying to run other people's business, you'll do a lot better. And I says Homer, I says, whether you give me this \$200 or not, I said I am going to tell you one thing; I said I am going to bury my wife the way I want and I said when your wife dies, I said you can bury her for fifty cents in an apple box. And of course, that really put the blood boiling in Mr. Kellough's veins. And he banged his fist on the desk and he pointed his finger at me and he said "You smart son of a bitch." He says when you're through with this company he says, I'll make sure that you won't get a bond to sell real estate again, you see. So I said oh, we'll see about that or something like that. However, he gave me the cheque and I walked out.

Q This was in August of --

THE COMMISSIONER: You were pretty cross?

A Pardon?

THE COMMISSIONER: You were pretty cross?

A Well, Your Honour --

THE COMMISSIONER: Well, weren't you?

A In this --

THE COMMISSIONER: Weren't you?

A In this --

THE COMMISSIONER: Weren't you?

A I wasn't cross, but I was . . . insulted by this man making --

THE COMMISSIONER: Well, you just related to me, if you talked to Kellough the way you tell me you have talked, I would say you were cross.

A Well, I could have been but I was bereaved. I just lost my wife the night before and it was my loving wife, my sweetheart, the mother of my nine children and it really made a deep impression on my feelings.

Q MR. MCGILLIVRAY: And, it wasn't quite the night before. I thought a few days before people had come from Vancouver and you picked out the coffin and then you had gone to Kellough?

A Oh no, no it was the following day, on the 20th of

A (Cont) August and I believe the cheque was stamped on the 20th of August.

Q Well, is this before you picked out the coffin, sir?

A Pardon?

Q Is this before you picked out the coffin?

A After we picked out the coffin, after we went down to Park Memorial and made the funeral arrangements.

Q Fine. Now, first of all when you left, you did have the \$200 cheque?

A That's right.

He give me \$200 cheque.

Q And, you did continue to work for Mr. Kellough until the May of the following year?

A That's right. I took sick, I was very sick. My back was so sore and my ulcer in my stomach bothered me so bad I was down to see Doctor Gorman. He actuated me, he told me to take a rest, get away from work.

Q You were away for a couple of months in I think March and April?

A And, Mr. Kellough stated here that he doesn't recall I was away from work for a couple months. That is not true at all and Mr. Larsen stated here that he handed me a statement on the 21st of April which

A (Cont) is a deliberate lie because I wasn't here.

Q Fine. Now, you say because of this incident in 19, the summer of 1963, that it is because of this incident that in 1965, in May that you think Mr. Kellough put these two people up to fabricating, manufacturing this story; is that right?

A Well, Mr. McGillivray that is something I could not say here and testify that Mr. Kellough had put these people up to conspire this story or whether this was a rumour going around, because I worked with Niels Larsen at his office and I know Mr. Larsen quite well and some of the remarks and statements that this man had made, and if you want me to relate one of them, I would like to relate and tell you what Mr. Larsen treated me like as a branch manager.

Q Well, no I don't think we need to get into that. I'm just trying to find out, sir, whether you're saying it is because of this episode in the summer of 1963 that you think that it was in May of 1965 that Mr. Kellough arranged with these two people to cook up this story, is that what I understand your idea of it is?

A Well, that I couldn't tell you because according to what I had heard here yesterday that first of all

A (Cont) when those people had supposedly met me there and I had that conversation that they related the story to Mr. Larsen. Then Mr. Larsen had supposed to take it to Mr. Kellough.

Q Yes?

A And, it could have been a lot of differences there in their opinions and versions of it before it goes all finalized.

Would you mind if I had a cigarette, would it be all right?

THE COMMISSIONER: We don't do it.

MR. MCGILLIVRAY: Not just when you're giving evidence, sir.

THE COMMISSIONER: Not when you're giving evidence.

A Well, I'm a heavy smoker.

THE COMMISSIONER: I have been sitting here all day without smoking and you can, sir. You can certainly stay there without smoking while you're giving the evidence.

A I'm sorry Mr. Commissioner.

Q MR. MCGILLIVRAY: You took it back to this episode of 1963 where you say Mr. Kellough said I'll see you don't get a bond if you ever leave this company?

A That is right.

Q And, you think it is from that that his dislike of you flowed to the extent --

A That's right. He had a grudge against me and he was determined to take that revenge out on me regardless of cost because I could relate some other stories to the same incident.

Q Now, Mr. Philipzyk, I believe on the 28th of June, the Edmonton Real Estate Board Co-operative Listing Bureau Limited sent you this letter, your Counsel Mr. Cavanagh --

A A written complaint has been received from Mr. H.R. Kellough --

Q Did you receive it, sir?

A Well probably I have this letter Mr. McGillivray, but I'm pretty sure I have read it before.

Q Well I believe you acknowledged it, sir?

A That's right.

Q This letter, sir, is the first notice to Mr. Philipzyk of the complaint that had been made.

THE COMMISSIONER: From the Board?

MR. MCGILLIVRAY: From the Board, and this is dated June 28th, 1965. It is addressed to Mr. Philipzyk and it reads:

MR. MCGILLIVRAY: (Cont)

"Re Complaint from Mr. H.R. Kellough,
H.R. Kellough Realty Ltd."

It reads as follows:

"Dear Bob:

A written complaint has been received from Mr. H.R. Kellough of H.R. Kellough Realty Ltd., and under Section 181 of our Constitution and By-laws the Directors have instructed me to notify you of the subject matter of this complaint.

Briefly, Mr. Kellough's report outlines that you, in conversation with some of his Employees, have advised them that Mr. Kellough and/or H.R. Kellough Realty Ltd., owe you money which you are unable to collect and for which you must sue Mr. Kellough and/or H.R. Kellough Realty Ltd., if you are to collect same.

Mr. Kellough points out that instead of him and his Firm owing you money you are indebted to his Firm for advances etc., over and above commissions, in the amount of over \$1300.00 and he lodges a formal complaint

MR. MCGILLIVRAY: (Cont)

"against you for making these statements and asks that the Directors take steps to see that you cease from making such statements.

Under Section 182 of our Constitution and By-laws, you are requested to forward to this office at your earliest convenience a reply to Mr. Kellough's complaint and we would ask that you forward this reply to the Bureau Office as soon as possible.

A copy of this letter is being forwarded to Mr. Walsh, your Employer, and to Mr. H. R. Kellough."

May that be marked, sir.

MR. SHORT:

32.

LETTER DATED JUNE 28th, 1965
FROM EDMONTON REAL ESTATE
BOARD CO-OPERATIVE LISTING
BUREAU LIMITED, MARKED
EXHIBIT #32.

Q MR. MCGILLIVRAY: And, is this the reply that you made; is this your handwriting, Mr. Philipzyk?

A Yes, it looks something like it. June 29th.

A (Cont)

"Dear Sir:

Re Complaint H.R. Kellough.

Dear Kelly,

I do not remember talking to anyone from Kellough's about money -- " well, that is true. I met Mrs. Hansen, I exchanged a few words with her but I wasn't talking about money.

Q The question is, sir, is that your letter?

A Oh, yes.

Q All right, sir.

A That is my letter.

Q And, I believe that was forwarded to the Real Estate Board by your employer, Mr. Walsh?

A Yes, I believe so.

Q All right, sir. Perhaps this can be on exhibit. This letter reads:

"Dear Kelly.

Re. Complaint H.R. Kellough.

I do not remember talking to anyone from Kelloughs about money owing to me. What he says about money owing to him is not true. And he should not tell other people that it is. Sincerely R.J. Philipzyk."

Q (Cont) May that be marked, sir.

MR. SHORT: 33.

LETTER DATED JUNE 29TH, 1965,
MARKED EXHIBIT #33.

Q MR. MCGILLIVRAY: And then, sir, if I may have
the letter to Mr. Philipzyk of October 4th.

MR. CAVANAGH: From whom?

MR. MCGILLIVRAY: From the Board.

MR. CAVANAGH: I don't appear to have that
sir, no, it isn't in here.

MR. MCGILLIVRAY: Well, perhaps we can do it
with a copy here.

Mr. Philipzyk, I take it you
received a letter from the Real Estate Board, the
Edmonton Real Estate Board Co-operative Listing
Bureau Limited which was dated the 4th of October,
1965 and just tell me if you received this letter.
I'll read it to you.

"Dear Bob:

Re: H. R. Kellough Realty Ltd.

Please refer to correspondence,
particularly our letter dated June 28th, 1965
in which we advised of a complaint from

MR. MCGILLIVRAY: (Cont)

"Mr. Kellough of H.R. Kellough Realty Ltd. to the effect that you are alleged to have stated that Mr. Kellough owes you money which you are unable to collect. You replied to our reference letter on June 29th and we also have a letter from Mr. Walsh, your agent, of the same date.

At the last meeting of the Directors of the Edmonton Real Estate Board this whole matter came up for review and in the light of Mr. Kellough's representations that you have been making these statements and that he considers making such statements to be a breach of ethics, the Directors have decided that this matter should be heard by our Ethics Committee.

We will accordingly advise you the time, date and place at which such hearing will be held. We are forwarding a copy of this letter to Mr. Walsh, your employer, though he is in no way involved in the complaint which Mr. Kellough has registered with this Board against you.

Very truly yours."

MR. MCGILLIVRAY: Did you get the --

A Well --

Q -- original of that letter?

A I thought I had it, a copy of it. I don't know whether I still have it or not Mr. McGillivray, but I recall that Mr. Walsh got it and it was read to him.

Q And, I believe Mr. Walsh advised the Board that he would be your representative.

May this be marked, sir?

MR. SHORT: Exhibit 34.

LETTER DATED OCTOBER 4TH, 1965,
MARKED EXHIBIT #34.

Q MR. MCGILLIVRAY: Am I right about that, sir, Mr. Walsh advised the Board he was going to be your representative?

A That's right because he is a better educated man and he is more familiar with, you know, the things in the Board than I was.

Q And then, sir, have you the original of the letter of the 14th of October to Mr. Walsh. And then on the 14th of October, after Mr. Walsh advised the

Q (Cont) Edmonton Real Estate Board Co-operative Listing Bureau Limited that he was going to be their representative, he was sent this letter.

"Enclosed please find photostats of Mr. Kellough's correspondence of June 8th and September 7th and also photostats of the ledger sheets as they pertain to Mr. Philipzyk's account.

I hope we can set up a meeting very shortly to complete this matter."

Those two letters were the letters of complaint, the original letter and the other one of September?

A Yes, it was something like that.
I know I have some of them here but I don't know if I have them all complete here or not.

Q May that be marked?

MR. SHORT: Exhibit 35.

LETTER DATED OCTOBER 14, 1965,
MARKED EXHIBIT #35.

Q MR. MCGILLIVRAY: Well then, sir, you eventually got a notice did you not, on the - which was dated the 6th of December which advised you that there was

Q (Cont) going to be a Hearing on the 17th of December?

A Yes, something like that.

Q And, you and Mr. Walsh, Mr. Walsh being your representative, attended at the meeting of the 17th of December?

A That's right.

Q This is a meeting of the Ethics Committee?

A That's right.

Q They're going to investigate the complaint of Homer Kellough about you, about what was being alleged you said these things about him.

Now, I wonder if you will just tell the Commissioner in your own words what happened at that meeting. Just describe anything, or everything about that meeting that you can?

A Well, to the best of my recollection and my memory what I can account for when we got there, was the Chairman who I think was Mr. Winterburn, had read some letter about these complaints from Mr. Kellough that I had supposed to make some derogatory remarks about him or something. But, it was only for a short period.

The whole issue, the whole thing

A (Cont) concentrated on Mr. Kellough me owing him money. And, what a good Samaritan he was and how much he advanced me and he even as much paid for my insurance - that was true, out of my commission - and, I don't know what else went on. However, it got around so one of the members in the audience had answered me how I had come of leaving Kelloughs so I went on to explain to him that I was called over to see Mr. Kellough in his office, and he had a little bit of discussion with me and told me how he couldn't see how a salesman could take two months off to have a holiday in Vancouver like this. Anyway, when I came back, I told him after Mr. Larsen returned back to the office, he came in the office took his coat off and called me in. And he said to me, he said well I'm sorry we have to part company he said, but he said the orders are from Mr. Kellough that you are fired and that you are to leave the company immediately. Or at once, one or the other, so I says well, if that's the case, I guess I better leave. And I went and picked up my books.

And Mr. Larsen was standing just around the corner of the table about four, five chairs away from me --

Q He was sitting or standing?

A He was sitting. We were all sitting down there.

But, Mr. Larsen had made a remark, he said that's a lie. And of course, I reiterated back; I said you are the liar - which because God knows he did lie because he is the one that fired me and told me that Kellough said I was fired and I was to leave the company. So, when I made that remark, he made a dash for me. Now, somebody had said in here that he didn't leave his chair. Well, anyone in that audience can say that is not true because Mr. Larsen had made an advance of about at least three or four chair lengths and if it wasn't for these people grabbed him, I think he would have killed me over there because he was quite a husky man.

And, I started to retreat, to leave like, you know, to get away. And, he was trying to proceed after me but I was scared of him so some of the other gentlemen grabbed him and held him back.

However, but just prior to this, maybe I have overlooked one point. There was Mr. Kellough there and he was standing there and

A (Cont) shaking and he was a raving just about as loud as he can talk, and he was waving this letter I believe that he had from Mr. and Mrs. Olthius that I had supposed to met them there on 101 Street and 114 Avenue in the month of August, in '65. But nobody had a chance to look at or read and finally he got up and he said, and he pointed hi finger, and he said I want that bastard stop talking about me.

And, I said to Mr. Kellough, I'm no bastard I said. My mother and father were legally married. I said I can produce their marriage certificate.

So, this incident I think that Mr. Larsen performed was just a little later after that.

Q Well first of all, this incident of Mr. Kellough casting his phrases on the Board on you or your family, that occurred fairly early in the proceedings?

A Well, I would say probably it was about halfway because I think the meeting started around about maybe oh, I would say two or three o'clock in the afternoon. I just can't recall the exact time.

But however, after this thing,

A (Cont) this incident that Mr. Larsen came after me there like a grizzly bear; so they put me out. Instead of putting Mr. Larsen out, he was the aggressor and made the attempt on me, they told me to leave the audience and they put me out so I couldn't hear the rest of the meeting. But, Mr. Larsen he was left to remain there you know and continue on.

Q Why would they put you out, Mr. Philipzyk?

A Well, of course, it was quite natural. I think that anyone that was there that would have any sincerity to approve the facts of this whole thing, one could see that if you express my expression, it was a kangaroo court. It was all arranged for a purpose of one thing, it was to oblige Mr. Kellough the one thing he so deeply desired is to have me punished and thrown out of the realty business because this is what he was after.

Q You think Mr. Kellough had arranged with the --

A Well, I couldn't prove that. I wouldn't have no way of that, but Mr. Kellough has a lot of influence in the real estate because he was the ex-president and naturally he was on the board. I understand he helped draw up the constitutional by-laws for that real estate and was in another, and naturally he has

A (Cont) a lot of influence and a lot of power.

If you would like me to relate one little incident, Mr. McGillivray, I'll tell you what he done one night.

Q Well, I don't - well, let's just stick to this inquiry Mr. Philipzyk.

Now, is there anything else you can tell us about this meeting, first of all, I was 't quite clear why they put you out?

A Well, you can ask Mr. Kellough.

Probably he would know better -- Kelly Haugen because everybody knows that I didn't make no attempts other than when he said that it was a lie because that he fired me and I said you are the liar.

Well, I didn't actually call him a liar distinctly, I just said you are the liar. And of course when I made that remark and he reiterated his, well that is a deliberate lie because I only said it once.

He really made a dive for me. Of course I was scared and started to retreat. And he came about three chair lengths before these people grabbed him and stopped him from proceeding against me.

Q Do you remember who grabbed him?

A Pardon?

Q Do you remember who grabbed him?

A Well now, you know I didn't know very many people that were there.

Q It's quite understandable, sir, I just wanted --

A I beg your pardon?

Q I'm not saying you should remember. I wondered --

A Well I wouldn't, I didn't know very many people there. About the only one I knew there who was quite familiar to me was Mr. Norm Winterburn and there is another thing too, you take when Mr. Kellough insulted me by calling me a bastard. Now at least you would think that the Chairman would have got up and said to Mr. Kellough, now look, I want you to withdraw this remark you make about Mr. Philipzyk and apologize. Well, Mr. Winterburn just sat back over there and he thought it was just wonderful, you know, that Mr. Kellough just branded me as a bastard over there and getting away with it.

Q You think, you sort of sense that Mr. Winterburn approved of it?

A Well he certainly must have otherwise he would have had some objection to it.

Q But, I rather gather from what you said he seemed rather pleased that Kellough had used an expression

Q (Cont) Like that about you?

A Well, I couldn't just say how pleased he was but he was in his position from maybe from here to that door from me and I could just tell the expression on his face you know, and the feeling in his heart that he was quite content with what Mr. Kellough had said.

Q No no, what you're saying is he didn't reprimand Mr. Kellough?

A That's right.

Q But, I mean you don't say or are you saying that he seemed to be pleased, I got that from what you said earlier?

A I couldn't verify that Mr. McGillivray because that is something I can't get inside of another man's conscience to find out what his thoughts were.

Q Now, how long were you out of the meeting before it ended; would you give the Commissioner any estimate of that?

A Roughly I would say about, I would say around half an hour, that's about what I was out of there.

Q And, was Mr. Haugen the secretary, out with you?

A Well yes, he was there like in the front where all the executives were, that the Chairman, Mr. Winterburn,

A (Cont) and there was Mr. Haugen --

Q No, no. Didn't Mr. Haugen go out with you?

A I know there was somebody that had me by the shoulder like as if I was the attacker or something and told me to leave. Well I did, I left. I figured it just too, you pet a dog then be bitten by him and I figured they asked me to leave the room there so I did.

Q Was it Mr. Kelly Haugen who had his hand on your shoulder?

A Well it could have been now Mr. McGillivray.

Q Did he go outside with you?

A No. Just out to some room, just outside this meeting room.

Q Outside where the meeting was?

A Just outside where the meeting was.

Q And, he stayed with you?

A No, he didn't stay there. He went back into the hearing there. I was outside all by myself, outside the room.

Q When did the others come out, do you know; for instance, Mr. Kellough?

A Well, I was called to come back into the room there about maybe half an hour after this. And, the way

A (Cont) it looked to me that the decision was made and the thing was just wound up and they were just breaking up. They seen Mr. Kellough leaving and I don't know, Norm Murray --

Q Mr. Kellough, Mr. Murray and Mr. Larsen, his employees, who had been there. They were all leaving?

A That is right.

They were leaving and people were dispersing.

Q Their employer, Mr. Walsh had been there throughout?

A Yes, Mr. Walsh was there during the time I was out of the room, that's right.

Q Did you or Mr. Walsh get an opportunity to ask questions of somebody like Joe Olthius?

A Mr. McGillivray, I tried on two or three different occasions to have a chance to explain my side of the story. But, I was ordered to sit down. I was hushed out.

The only time I went on to explain this is when this one gentleman asked me how I come to leaving Kellough Realty, and I went on to explain that I was ordered by Mr. Kellough that I was fired and I was to leave the company, and Mr. Larsen said that was a lie. And I said you are a liar and, that was about the only time I

A (Cont) ever had a chance of asking any questions.

Q I just wondered from something you said there, Mr. Philipzyk, you said that everytime you wanted to ask a question you were ordered to sit down?

A That's right.

Q Did you stand up, sir, when you were going to ask a question?

A Yes. When you talk you're supposed to stand up and answer their question, that's right.

Q That was the way they handled it, if someone wished to talk?

A Well, in general I seen most of the guys got up to talk they stood up and expressed themselves.

Q Well, at least the idea I have of this meeting or Hearing was that everybody was seated around a board table?

A Well, it's quite a long table about from here to this gentleman there. And, I was approximately, I just can't recall to the last person; I would say there might have been a dozen people in there, something like that.

Q All right, sir. Well then, Mr. Walsh the next day I believe drew a memorandum of his understanding or at least of his synopsis of what occurred at the meeting?

A That's right. And I have a copy of it here.

Q And, did you go over it with him?

A No, I didn't. I wasn't even in the office when Mr. Walsh had written it on his memo --

Q This was his recollection the next day of what occurred?

A That's right. He just gave me a carbon copy of it.

Q And, did you, on reading it, feel that Mr. Walsh had expressed it pretty accurately?

A Well, to the best of my knowledge Mr. McGillivray, I think the man expressed it over there just about as genuinely and as closely as anyone could ever witness.

Q You didn't find any fault, you in short agreed with what Mr. Walsh', in other words summary of what occurred?

A Well, some of the things he had stated in there that when I wasn't there to witness or hear, Mr. McGillivray, but the rest that I was there and I heard with my own ears and I seen with my eyes what went on, I sincerely believe that the man was a hundred percent sincere in every way that he expressed in that matter, in that report.

Q Well, perhaps we should put that in through another

Q (Cont) witness, sir, rather than through this witness.

Now then, sir, there was a --
Mr. Commissioner, it is now shortly after the usual adjournment time.

THE COMMISSIONER: I thought I might give you a little more time if you wanted it.

MR. MCGILLIVRAY: It's entirely in your hands, sir.

THE COMMISSIONER: Would you like to go on for about fifteen minutes?

MR. MCGILLIVRAY: Fine, sir.

Now, following the meeting of the Ethics Committee on the 18th of, on the 17th of December, there was an Ethics Committee meeting recommendation I believe and it was sent to the Board of Directors, and I am instructed that the Board of Directors had a meeting on the 22nd of December?

A It was sometime before Christmas.

Q Pardon?

A It was sometime before Christmas.

Q Were you invited to attend that meeting?

A No, I wasn't.

Q Were you given any opportunity, you or Mr. Walsh, to present any submissions to the Board of Directors?

A To the best of my recollection, Mr. McGillivray, I don't think I replied anything other than after they sent me this letter and it said that I was found of making derogatory remarks to Mr. Kellough and they wanted me to pay him a hundred dollars plus writing a letter of apology to Mr. Kellough.

Q May I have the letter dated the 24th of December.

Now, is this the, let me put it this way. This I believe is the letter to which you referred. perhaps your Counsel will confirm that being the letter?

MR. CANNAGH: Yes.

Q MR. MCGILLIVRAY: In which you were advised that you had been found guilty of a breach of ethics and were ordered to pay a hundred dollars and to write a letter of apology?

A That's right, that's right.

Q Now, that letter, sir, reads: It is dated December 24th. It is addressed to Mr. Philipzyk.

"Re: Hearing by the Ethics Committee on a Complaint made by Mr. H. R. Kellough against Mr. R. J. Philipzyk.

Q

(Cont.)

"Dear Mr. Philipzyk:

The report and recommendations of the duly constituted Ethics Committee on the hearing that was held on December 17th, 1965 on a complaint by Mr. H.R. Kellough against you were considered by the Directors of the Edmonton Real Estate Board at their last meeting and the Directors have now asked that I communicate the findings and decision of the Committee and the decision of the Directors to Mr. Kellough and to you.

It is the unanimous decision of this duly constituted Ethics Committee to the Directors of the Edmonton Real Estate Board that the complaint lodged against you of making derogatory statements against Mr. H. R. Kellough has been established and that this constitutes improper conduct on your part and therefore a violation of the standards of ethical conduct which we require our members to observe. This Committee therefore recommended to the Directors that you, Mr. Robert J. Philipzyk, write a letter of full apology to Mr. Kellough for making

0 (Cont)

"such derogatory statements against him, that you be severely reprimanded for your conduct and that you be sternly warned that any further complaints against you will, if substantiated, be dealt with most severely. In addition this Committee recommended to the Directors that your membership in the Edmonton Real Estate Board be reviewed and that you be assessed a fine of \$100.00 payable at once and not later than December 31st, 1965.

The Directors of the Edmonton Real Estate Board have given these recommendations careful consideration and have given unanimous approval to the recommendations and instruct that you proceed to write a full letter of apology to Mr. H.R. Kellough, and that you pay to the Bureau office the assessed fine of \$100.00 not later than December 31st, 1965.

They have also instructed me and you are hereby severely reprimanded for your conduct against a member of this Board, Mr. H.R. Kellough and are warned that any

Q (Cont)

"Further complaints, if substantiated, will be dealt with most severely.

I should point out to you at this time that under Section 155 of our Constitution and By-laws you have the right to appeal the decision of the Directors to a general meeting of the members of the Edmonton Real Estate Board.

If it is your intention to make this appeal I would ask that you advise this office in writing so that the usual procedures can be instituted.

Yours truly,

C. (Kelly) Haugen
Executive Secretary."

May that be marked, sir?

MR. SHORT:

Thirty-six.

LETTER DATED DECEMBER 24th,
1965, MARKED EXHIBIT #36.

Q

MR. MCGILLIVRAY: You acknowledged receipt of that letter, I believe Mr. Philipzyk, and advised that it indeed was your intention to appeal?

A Yes, I did.

Q And, this, sir, is your letter of December 30th.
Will you identify it as being yours, sir, I'll read
it.

A Yes, to Mr. Kelly Haugen.

Q That's your letter?

A That is regarding my appeal, the letter I wrote.

Q That letter reads:

"Dear Mr. Haugen -- "

Dated December 30th, addressed to Mr. Kelly Haugen.

"I received your letter
dated December 24th 1965 and received by me
on December 28th 1965 regarding the hearing
by the Ethics Committee on December 17th 1965
and their decision. It is my intention to
appeal this Decision under Section 155
Constitution and By-laws at the next General
Meeting.

Yours truly,

R. J. Philipzyk."

MR. SHORT:

Thirty-seven.

LETTER DATED DECEMBER 30th, 1965
MARKED EXHIBIT #37.

Q MR. MCGILLIVRAY: Then Mr. Philipzyk, there are some, a date at which this Hearing would be proceeded with was elected and then it was found out that Kellough was ill?

A He had a heart attack or something. They asked me to excuse him and which I gladly did Mr. McGillivray, but when this appeal came up and I was sick in bed for five days and nights with the flu and I had to have people bring the food up there, and I wasn't present at this appeal; they didn't need me there because I think they had the decision made already anyways. They went ahead anyway.

Q On April the 29th, by a letter of April 29th I think you were advised that the Hearing was going to go on the 3rd of May?

A Second or third of May, something like that yeah, in the Edmonton Inn wasn't it?

Q And, I believe this letter, sir, was sent to you on the 29th of April. It's addressed to you apparently by registered mail. It's concerning your appeal under Article 155 May 3rd, 1966 - Edmonton Inn.

(Cont)

"Dear Mr. Philipzyk:

I have been asked by the Directors to write to you once more with respect to the procedures that will be followed when your appeal is heard at the general meeting on May 3rd, 1966 at the Edmonton Inn.

In our letter of April 19th, 1966 we outlined how the appeal would be conducted and that each party would be allowed ten minutes, after which the Chairman of the Ethics Committee would be allowed 10 minutes. The Directors have given consideration to this matter of the time allowed and have asked me to advise you as follows:

The Member making the appeal will be allowed approximately 15 minutes, after which the Member who made the complaint, that is Mr. Kellough, will also be allotted approximately 15 minutes. The Chairman of the Ethics Committee will then have approximately 15 minutes in which to outline the reasons for the Committee's decision.

This is the only change in the

C (Cont)

"procedure as outlined to you earlier and it is our hope that this matter can be finalized on May 3rd."

Now, you weren't there on May the 3rd?

A No, I wasn't.

Q Was Mr. Walsh, is your representative?

A Yes, I believe Mr. Walsh was there, yes.

Q And, to the best of your knowledge, he spoke on your behalf?

A Well, I don't know just what he said.

To tell you the truth, I never had no report from him. But according to what he explained to me and I heard --

Q Mr. Kellough wasn't there either?

A I couldn't tell you who was there or wasn't because I wasn't there myself.

Q Well, tell me sir, when you got the flu just about the time this meeting was coming up, did you attempt to get an adjournment so that you could be there?

A Well, you see I too' sick. This meeting was the beginning of the week or something and I took sick.

MR. MCGILLIVRAY:
have one?

I think, sir, might I just

THE COMMISSIONER:

Go ahead.

MR. MCGILLIVRAY:
time to break, sir.

This would seem to be a good

THE COMMISSIONER:

I beg your pardon?

MR. MCGILLIVRAY:
to break.

That would be a convenient time

THE COMMISSIONER:

All right.

Certified a correct transcript,

Louis Lee
Louis Lee,
Official Court Reporter.
(Pages 1 - 74)

Beverly A. Kellough
Beverly A. Kellough,
Official Court Reporter.
(Pages 75 - 173)

Edmonton, Alberta,
July 15, 1970
ht/10

DATE DUE

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